<table>
<thead>
<tr>
<th>Tab 1</th>
<th>CS/SB 326 by GO, Brandes; (Similar to CS/H 1341) State-owned Motor Vehicles</th>
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<td>625186</td>
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<td>A S L RCS AGG, Simpson</td>
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<tr>
<th>Tab 2</th>
<th>SB 864 by Smith; (Identical to H 0955) State Contracts</th>
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<tr>
<th>Tab 3</th>
<th>CS/SB 912 by CJ, Flores (CO-INTRODUCERS) Soto; (Similar to CS/H 0761) Fraudulent Activities Associated with Payment Systems</th>
</tr>
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<td>A S RCS AGG, Dean</td>
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<tr>
<th>Tab 5</th>
<th>CS/SB 966 by BI, Benacquisto (CO-INTRODUCERS) Gaetz, Brandes, Negron, Bean, Hutson, Richter, Detert, Simpson, Simmons, Hays, Stargel, Soto, Bradley; (Similar to CS/H 1041) Unclaimed Property</th>
</tr>
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<thead>
<tr>
<th>Tab 6</th>
<th>CS/SB 992 by BI, Brandes; (Similar to CS/CS/CS/H 0651) Department of Financial Services</th>
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<tr>
<th>Tab 7</th>
<th>CS/SB 1052 by EP, Hays; (Compare to CS/CS/CS/H 0589) Environmental Control</th>
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<tr>
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<td>D S RCS AGG, Hays</td>
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<td>AA S RCS AGG, Hays</td>
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<thead>
<tr>
<th>Tab 8</th>
<th>CS/SB 1176 by EP, Diaz de la Portilla; (Identical to CS/H 0795) Dredge and Fill Activities</th>
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</thead>
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<tr>
<th>Tab 9</th>
<th>CS/SB 1200 by GO, Bean; (Compare to H 1049) Pay-for-Success Contract Program</th>
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<tr>
<th>Tab 10</th>
<th>SB 1206 by Abruzzo; (Identical to H 0839) Auditor General</th>
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<tr>
<th>Tab 11</th>
<th>SB 1226 by Ring; (Identical to H 0981) Administrative Procedures</th>
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<tr>
<th>Tab 12</th>
<th>SB 1228 by Detert; (Compare to H 0765) Cottage Food Operations</th>
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<tr>
<th>Tab 13</th>
<th>SB 1270 by Simpson; (Identical to H 4035) Pesticide Registration</th>
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<tr>
<th>Tab 14</th>
<th>SB 1282 by Dean; (Similar to 1ST ENG/H 7013) Fish and Wildlife Conservation Commission</th>
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<th>Tab 15</th>
<th>SB 1300 by Dean; (Similar to H 7025) At-risk Vessels</th>
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<tr>
<th>Tab 16</th>
<th>CS/SB 1422 by BI, Simmons; (Similar to CS/CS/H 1163) Insurer Regulatory Reporting</th>
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<tr>
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<td>A S L RCS AGG, Lee</td>
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</table>
Tab 17  **SB 1428** by Simmons; State Investments

Tab 18  **SB 1488** by Montford; (Identical to H 0939) Aerial Photographs and Nonproperty Ownership Maps

Tab 19  **CS/SB 1538** by MS, Evers; (Similar to CS/H 1219) Veterans Employment

Tab 20  **CS/SB 1604** by HP, Grimsley; (Similar to CS/CS/H 1211) Drugs, Devices, and Cosmetics

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Sponsor</th>
<th>Committee</th>
<th>Sponsorship</th>
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<td>AGG, Altman</td>
<td>02/15 12:12 PM</td>
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<td>SB 1488</td>
<td>Montford</td>
<td>RCS</td>
<td>AGG, Simpson</td>
<td>02/15 12:12 PM</td>
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<tr>
<td>CS/SB 1538</td>
<td>MS</td>
<td>RCS</td>
<td>AGG, Altman</td>
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<td>CS/SB 1604</td>
<td>HP</td>
<td>RCS</td>
<td>AGG, Altman</td>
<td>02/15 12:16 PM</td>
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Tab 21  **SB 7050** by GO; (Compare to CS/CS/CS/H 1033) Information Technology Security

<table>
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<tr>
<th>Bill Number</th>
<th>Sponsor</th>
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<td>GO</td>
<td>RCS</td>
<td>AGG, Altman</td>
<td>02/15 12:16 PM</td>
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</tbody>
</table>
### ☑️ Overview of the Expanded Agenda

**Meeting Date:** Thursday, February 11, 2016  
**Time:** 10:00 a.m.—12:00 noon  
**Place:** Toni Jennings Committee Room, 110 Senate Office Building  
**Members:** Senator Hays, Chair; Senator Braynon, Vice Chair; Senators Altman, Dean, Lee, Margolis, and Simpson

### Bills and Committee Actions

<table>
<thead>
<tr>
<th>Bill No. and Introducer</th>
<th>Bill Description and Senate Committee Actions</th>
<th>Committee Action</th>
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</thead>
</table>
| CS/SB 326  
Governmental Oversight and Accountability / Brandes  
(Identical H 1341) | State-owned Motor Vehicles; Requiring the Department of Management Services to prepare a plan regarding the centralized management of state-owned motor vehicles; requiring the department to submit the plan to the Governor and the Legislature by a specified date; prescribing requirements for the plan; requiring the department to conduct certain evaluations while developing the plan, etc.  
**Actions:**  
GO 11/02/2015  
GO 11/17/2015 Favorable  
AGG 02/11/2016 Favorable | Favorable  
Yeas 5 Nays 0 |
| SB 864  
Smith  
(Identical H 955) | State Contracts; Requiring all state contracts in excess of a certain amount to require that call-center services be staffed by persons located within the United States, etc.  
**Actions:**  
CM 01/19/2016 Favorable  
GO 02/01/2016 Favorable  
AGG 02/11/2016 Favorable | Favorable  
Yeas 5 Nays 0 |
| CS/SB 912  
Criminal Justice / Flores  
(Similar CS/H 761) | Fraudulent Activities Associated with Payment Systems; Revising the felony classification for unlawful conveyance of fuel; requiring retail petroleum fuel measuring devices fitted with scanning devices to have certain security measures; requiring the owner or operator of a device to have certain security measures in place within a specified timeframe upon notice from the Department of Agriculture and Consumer Services; requiring the Department of Agriculture and Consumer Services to enforce provisions; reducing the number of counterfeit credit cards that a person can be in possession of to qualify as unlawful, etc.  
**Actions:**  
CJ 01/25/2016 Favorable  
AGG 02/11/2016 Favorable | Favorable  
Yeas 5 Nays 0 |
<table>
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<tr>
<th>TAB</th>
<th>BILL NO. and INTRODUCER</th>
<th>BILL DESCRIPTION and SENATE COMMITTEE ACTIONS</th>
<th>COMMITTEE ACTION</th>
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<tbody>
<tr>
<td>4</td>
<td>SB 922 Montford</td>
<td>Solid Waste Management: Providing for the funding of a waste tire abatement program from the Solid Waste Management Trust Fund up to a specified percentage of total funds; authorizing the Department of Environmental Protection to use account funds to contract with a third party for the closing and long-term care of solid waste management facilities under specified circumstances; authorizing waste tire abatement programs under the small county consolidated grant program, etc.</td>
<td>Fav/CS Yeas 5 Nays 0</td>
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<tr>
<td></td>
<td>(Similar CS/H 987, Compare CS/S 1052)</td>
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<td>5</td>
<td>CS/SB 966 Banking and Insurance / Benacquisto (Compare H 1041)</td>
<td>Unclaimed Property; Revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; requiring an insurer to compare records of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File or a certain database or service to determine if a death is indicated; providing the circumstances under which a policy, a contract, or an account is deemed to be in force, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>6</td>
<td>CS/SB 992 Banking and Insurance / Brandes (Similar CS/CS/H 651, Compare CS/H 593, CS/S 686)</td>
<td>Department of Financial Services: Authorizing the Department of Financial Services to create an Internet-based transmission system to accept service of process; authorizing the Chief Financial Officer, with the approval of the State Board of Administration, to include specified employees other than state employees in a deferred compensation plan; revising certain standards for carbon monoxide detector devices in specified spaces or rooms of public lodging establishments; revising firefighter and volunteer firefighter certification requirements, etc.</td>
<td>Fav/CS Yeas 5 Nays 0</td>
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<td>7</td>
<td>CS/SB 1052</td>
<td>Environmental Control: Prohibiting water management districts from modifying or reducing consumptive use permit allocations if actual water use is less than permitted water use due to water conservation measures or specified circumstances; requiring the Department of Environmental Protection to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply, etc.</td>
<td>Fav/CS Yeas 5 Nays 0</td>
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<tr>
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<td>EP 01/20/2016 Fav/CS</td>
<td>AGG 02/11/2016 Fav/CS</td>
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<td>8</td>
<td>CS/SB 1176</td>
<td>Dredge and Fill Activities; Revising the acreage of wetlands and other surface waters subject to impact by dredge and fill activities under a state programmatic general permit; providing that seeking to use such a permit consents to specified federal wetland jurisdiction criteria; deleting certain conditions limiting when the department may assume federal permitting programs for the discharge of dredged or fill material, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td></td>
<td>EP 01/27/2016 Fav/CS</td>
<td>AGG 02/11/2016 Favorable</td>
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<td>9</td>
<td>CS/SB 1200</td>
<td>Pay-for-Success Contract Program; Authorizing a state agency to enter into a pay-for-success contract with a private entity under certain circumstances; specifying the duties of the state agency; requiring the private entity to annually report to the state agency, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<tr>
<td></td>
<td>GO 01/26/2016 Fav/CS</td>
<td>AGG 02/11/2016 Favorable</td>
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<td>10</td>
<td>SB 1206</td>
<td>Auditor General: Requiring the Auditor General to annually conduct a performance audit of a randomly selected state agency, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>GO 02/01/2016 Favorable</td>
<td>AGG 02/11/2016 Favorable</td>
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<td>11</td>
<td>SB 1226</td>
<td>Administrative Procedures; Providing additional requirements for the calculation of estimated adverse impacts and regulatory costs, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>GO 01/26/2016 Favorable</td>
<td>AGG 02/11/2016 Favorable</td>
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<td>12</td>
<td>SB 1228 Detert</td>
<td>Cottage Food Operations; Increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>(Compare H 765)</td>
<td>CM 01/25/2016 Favorable AGG 02/11/2016 Favorable FP</td>
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<td>13</td>
<td>SB 1270 Simpson</td>
<td>Pesticide Registration; Deleting provisions relating to supplemental registration fees for certain pesticides that contain active ingredients for which the United States Environmental Protection Agency has established food tolerance limits; deleting a provision requiring the department to publish a list of certain active ingredients, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>(Identical H 4035)</td>
<td>AG 01/19/2016 Favorable AGG 02/11/2016 Favorable AP</td>
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<td>14</td>
<td>SB 1282 Dean</td>
<td>Fish and Wildlife Conservation Commission; Revising penalties for violations of commission rules relating to control and management of state game lands; authorizing exceptions to the prohibition on spearfishing; revising penalties for violations related to subagent sales of hunting, fishing, and trapping licenses and permits, etc.</td>
<td>Fav/CS Yeas 5 Nays 0</td>
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<td>(Similar H 7013)</td>
<td>EP 01/20/2016 Favorable AGG 02/11/2016 Fav/CS AP</td>
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<td>15</td>
<td>SB 1300 Dean</td>
<td>At-risk Vessels; Prohibiting a vessel that is at risk of becoming derelict from anchoring on, mooring on, or occupying the waters of this state; providing that a person who anchors or moors such a vessel or allows it to occupy waters of this state commits a noncriminal infraction, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>(Similar H 7025)</td>
<td>EP 01/27/2016 Favorable AGG 02/11/2016 Favorable FP</td>
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<td>16</td>
<td>CS/SB 1422</td>
<td>Insurer Regulatory Reporting; Requiring an insurer to maintain a risk management framework; requiring certain insurers and insurance groups to conduct an own-risk and solvency assessment; requiring certain insurers and members of an insurance group to prepare and submit a corporate governance annual disclosure, etc.</td>
<td>Fav/CS Yeas 5 Nays 0</td>
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<td>Banking and Insurance / Simmons (Similar CS/H 1163, Compare CS/CS/H 1165, Linked CS/CS/S 1416)</td>
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<td>17</td>
<td>SB 1428 Simmons</td>
<td>State Investments; Encouraging the State Board of Administration to determine which publicly traded companies in which the Florida Retirement System Trust Fund is invested operate in Northern Ireland; encouraging the state board to take certain action upon making a determination; providing that the state board is not liable or subject to a cause of action under the act, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>GO 02/01/2016 Favorable AGG 02/11/2016 Favorable</td>
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<td>18</td>
<td>SB 1488 Montford</td>
<td>Aerial Photographs and Nonproperty Ownership Maps; Revising the county population thresholds for purposes of identifying the governmental entity responsible for payment of aerial photographs and nonproperty ownership maps, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>(Identical H 939, Compare H 7099)</td>
<td>CA 02/01/2016 Favorable AGG 02/11/2016 Favorable</td>
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<td>19</td>
<td>CS/SB 1538 Evers</td>
<td>Veterans Employment; Requiring each state agency and authorizing other political subdivisions of the state to develop and implement a veterans recruitment plan; requiring specified goals for veterans recruitment plans; requiring the Department of Management Services to collect specified data and to include the data in its annual workforce report and on its website, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<tr>
<td></td>
<td>Military and Veterans Affairs, Space, and Domestic Security</td>
<td>MS 01/26/2016 Fav/CS AGG 02/11/2016 Favorable</td>
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<td>Evers (Similar CS/H 1219)</td>
<td>AP</td>
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<td>20</td>
<td>CS/SB 1604 Grimsley</td>
<td>Drugs, Devices, and Cosmetics; Providing, revising, and deleting definitions for purposes of the Florida Drug and Cosmetic Act; revising prohibited acts related to the distribution of prescription drugs; providing for the expiration, renewal, and issuance of certain drug, device, and cosmetic product registrations; revising the definition of &quot;wholesale distribution&quot; for purposes of medical gas requirements, etc.</td>
<td>Fav/CS Yeas 5 Nays 0</td>
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<td>Health Policy / Grimsley (Similar CS/H 1211)</td>
<td>HP 01/26/2016 Fav/CS AGG 02/11/2016 Favorable</td>
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## SB 7050
Governmental Oversight and Accountability  
(Compare CS/CS/H 1033, H 1035, CS/H 1037, CS/S 624)

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<tr>
<td>21</td>
<td>SB 7050</td>
<td>Information Technology Security; Revising the membership of the Technology Advisory Council to include a cybersecurity expert; requiring the council, in coordination with the Florida Center for Cybersecurity, to identify and recommend STEM training opportunities; providing for the establishment of computer security incident response teams within state agencies; revising entities directed to adopt a unified state plan for K-20 STEM education to include the Technology Advisory Council, etc.</td>
<td>Fav/CS Yeas 5 Nays 0</td>
</tr>
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AGG 02/11/2016 Fav/CS  
AP
I. Summary:

PCS/CS/SB 326 requires the Department of Management Services (DMS) to prepare a plan regarding the centralized management of state-owned motor vehicles. The bill requires the DMS to submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2017.

The DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

The bill has an indeterminate fiscal impact.

The bill takes effect upon becoming a law.

II. Present Situation:

Department of Management Services

One of the duties of the Department of Management Services (DMS) is to obtain the most effective and efficient use of motor vehicles, watercraft, and aircraft for state purposes.¹

¹ Section 287.16, F.S.
Chapter 287, F.S., Part II: Means of Transport (ss. 287.14 – 297.20) governs the purchase or lease of motor vehicles.\(^2\) Chapter 287, F.S., Part II, applies to motor vehicles, watercraft, and aircraft owned leased, or acquired in any manner by any state agency, or the judicial branch.\(^3\) It is unlawful for a state officer or employee to authorize the purchase or continuous lease of any motor vehicle to be paid out of state funds or any agency funds unless such funds have been appropriated by the Legislature.\(^4\) All motor vehicles purchased or leased must be in the subcompact class, with exceptions for law enforcement, towing, transportation of more than three adults or bulk material, and vehicles operated on unpaved roads.\(^5\) Motor vehicles needed for an emergency or to meet unforeseen or emergency situations are allowed, if approved by the Executive Office of the Governor after consulting with the legislative appropriations committees.\(^6\) Vehicles for which replacement funds have been appropriated may not be retained in service unless an emergency or major unforeseen need exits.\(^7\) Any motor vehicle retained for this purpose must be reported to the Legislature in subsequent agency budget request documents that detail the specific justification for retention of each vehicle.\(^8\) Motor vehicles may not be acquired on a deferred payment contract that requires payment of interest or its equivalent except when specifically approved by the Governor’s Office in consultation with the legislative appropriations committees.\(^9\)

A state agency must obtain prior approval from the DMS for purchasing, leasing, or acquiring any motor vehicle, watercraft, or aircraft of any type.\(^10\) The DMS approval is not required for casual (short-term) lease of motor vehicles by state agencies.\(^11\) Funding in the General Appropriations Act is not allowed for purchases of vehicles in excess of prices negotiated by the DMS.\(^12\) Also, with the DMS approval, special authorization is given to the Department of Children and Families, the Agency for Persons with Disabilities, the Department of Health, the Department of Juvenile Justice, and the Department of Corrections to secure automobiles, trucks, tractors, and other automotive equipment for use at institutions, centers, residential facilities and county health departments under their respective jurisdictions.\(^13\)

Use of state-owned or leased vehicles or aircraft is limited to travel necessary to carry out employee job assignments, official state business, security and emergency activity.\(^14\) State employees whose duties are those of law enforcement\(^15\) have more latitude in their use of state

\(^2\) Section 287.14(2), F.S., defines the term “motor vehicle” as any automobile or light truck. Motor vehicle also includes any airplane or other vehicle designed primarily for transporting persons.

\(^3\) Section 287.20, F.S.

\(^4\) Section 287.14(3), F.S.

\(^5\) Section 287.151(1), F.S.

\(^6\) Section 287.14(3), F.S.

\(^7\) Section 287.14(4), F.S.

\(^8\) Id.

\(^9\) Section 287.14(5), F.S.

\(^10\) Section 287.15, F.S.

\(^11\) Id.

\(^12\) Section 287.151(2), F.S.

\(^13\) Section 287.155, F.S.

\(^14\) Section 287.17(2)(a)-(d), F.S.

\(^15\) Section 943.10(1), F.S., defines the term “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel.
owned or leased motor vehicles for official state business. Use of a state owned or leased motor vehicle for commuting is prohibited unless special assignment is authorized as a prerequisite by the DMS, the vehicle is required after hours to perform position duties, or an employee’s home is his or her official base of operations. A state agency head may assign a motor vehicle to a state officer or employee only if the officer of employee is projected to drive the motor vehicle a minimum of 10,000 miles annually on state business, unless the agency head provides written justification for the need of the assignment of the motor vehicle. Priority for vehicle assignment is given to those state employees who drive over 15,000 miles annually on state business.

**Bureau of Fleet Management**

The Bureau of Fleet Management and Federal Property Assistance within the DMS provides oversight responsibility for the state’s fleet of motor vehicles and mobile equipment, along with the federal surplus property program. The Bureau of Fleet Management manages the purchase, operation, maintenance and disposal of the state’s fleet of motor vehicles and watercraft. The state's fleet includes approximately 25,000 units, consisting of automobiles and light trucks, medium and heavy trucks, aircraft, construction and industrial equipment, marine equipment (e.g., boats, airboats, boat engines, etc.), trailers, tractors and mowers, small utility, motorcycles and all-terrain vehicles. The Division of Fleet Management determines the motor vehicles and watercraft included on state contracts, develops technical bid specifications and assists in evaluating contracts.

The Division of Fleet Management operates the Florida Equipment Electronic Tracking (FLEET) system, which provides the management, reporting and cost information required to effectively and efficiently manage the state’s fleet and to account for equipment use and expenditures. The FLEET Online System:

- Requires agencies to keep records and make reports regarding the effective and efficient use, operation, maintenance, repair and replacement of automobiles, light trucks, small and large (greater than 1 ton) vehicles and equipment designed primarily for transporting people and legal to operate on public roads, watercraft and aircraft; and
- Assures the efficient and safe use of motor vehicles and that they are used only for official state business.

whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

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16 Section 287.17(3)(b), F.S., provides that the term “official state business” shall be construed to permit the use of the vehicle during normal duty hours to and from lunch or meal breaks and incidental stops for personal errands, but not substantial deviations from official state business, if such use is at the direction of or with the permission of the agency head.

17 Section 287.17(3)(a), F.S.

18 Section 287.17(4)(a), F.S.

19 Id.


21 See [http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management](http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management) (last visited on Oct. 26, 2015). Also, see Chapters 60B-1(Motor Vehicles and Watercraft Acquisition, Assignment and Use) and 60B-3(Disposal of Motor Vehicles, Watercraft, and Aircraft), F.A.C.


23 Id.
The goals of the Division of Fleet Management are to:

- Ensure the state purchases quality and energy efficient motor vehicles, equipment and watercraft;
- Achieve maximum feasible return from disposal of used and surplus equipment;
- Return surplus equipment to governmental service when practical;
- Restrict use of state equipment to official state business;
- Provide management reports and data required to properly manage state fleet; and
- Provide reports to assure accountability of equipment expenditures and use.

**Climate-Friendly Public Business Provisions**

Section 286.29, F.S., outlines climate-friendly public business provisions required by state agencies. Some of these practices include requiring all state agencies to ensure that all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption. Each agency must measure and report compliance to the DMS through the Equipment Management Information System database. Also, state agencies, universities, community colleges, and local governments that purchase motor vehicles under a state purchasing plan are required to define the intended purpose of vehicle and use class for which vehicle is being procured. Additionally, all state agencies must use ethanol and biodiesel blended fuels when available. State agencies with central fueling operations for state-owned vehicles must procure biofuels for fleet needs to the greatest extent practicable.

**State Agency Fleets**

Table 1 shows the various fleets of state agencies. Some state agencies report heavy equipment in the FLEET system, but the DMS cannot state definitively that this data accurately reflects all heavy equipment owned or leased by state agencies. The list of aircraft in Table 1 also is not complete as some agencies with aircraft do not document this data in the FLEET system. The DMS is in the process of requiring all state agencies to report their inventory of aircraft in the FLEET system. Table 2 shows the funds appropriated to the various agencies for the purchase of vehicles during the last five fiscal years.

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24 Id.
25 Section 286.26(3), F.S.
26 Id.
27 Section 286.29(4), F.S.
28 Section 286.29(5), F.S.
29 Id.
30 E-mail from Ricky Moulton, Deputy Director of Legislative Affairs, DMS, dated November 5, 2015 (copy of e-mail on file with the Governmental and Accountability Committee).
31 Id.
32 Id.
Table 1. Agency Fleets

<table>
<thead>
<tr>
<th>Agency</th>
<th>Vehicles</th>
<th>Aircraft</th>
<th>Watercraft</th>
<th>Heavy Equipment</th>
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*Other includes tractors, trailers, mowers, all-terrain vehicles, etc.
Table 2. Five year history of appropriations relating to vehicle acquisition and replacement.

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The Fiscal Year 2013-2014 General Appropriations Act included $224,000 to fund a FLEET Management Business Case (Business Case). The DMS contracted with Mercury Associates, Inc., in July 2013 to identify the best options for managing the state’s fleet and to document recommendations in a formal business case.\(^{33}\) The Business Case presents a strategic review of fleet management activities in the state and contains an analysis report and recommendations for improving the performance and cost effectiveness of Florida’s state-wide fleet operations. The program areas of focus included:

- **Business Case**
  - Background information;
  - Evaluation of options;
  - Information or recommended options; and
  - Cost benefit analysis.
- **Review and recommend fleet options, management tools, policies and performance measure to support agency travel needs.**
- **Develop business and functional requirements for a Quality Assurance Program including a system for tracking key performance measures and controlling costs through accountability.**
- **Review and recommend the target size for the state fleet.**\(^{34}\)

The Business Case was completed in December 2013 and concluded that the FLEET system is the least capable system we [Mercury Associates, Inc.] have encountered in any of the 34 states they have reviewed.\(^{35}\) As a consequence, much of the detailed data Mercury required to conduct this study was either not available or was only available at a summary level.\(^{36}\) In addition, the Business Case identified 43 detailed recommendations. These recommendations were summarized into areas in the DMS’s Legislative Budget Request, Schedule IV-B, and are summarized below:

- **Fleet Administration - Expand the DMS role and increase staff resources to provide increased and centralized oversight, analysis, and services to manage the state’s fleet.**

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\(^{36}\) Id.
• Fleet Management Information System - Replace the existing in-house developed system (FLEET) with a more robust, fully featured and user friendly, intuitive Commercial Off the Shelf (COTS) application that allows easy distribution of information to all fleet users, customers, and management in a real-time environment.
• Fleet Replacement and Financing - Centralize fleet replacement planning and budgeting in the DMS, identify optimal replacement cycles for key types of vehicles, develop a long-term fleet replacement planning program, and adopt leasing as the primary means of financing fleet renewal.
• Fleet Size and Utilization - Conduct a study to reduce the size of the fleet by eliminating low use vehicles, study the feasibility of establishing shared-use motor pool locations in Tallahassee, develop and implement an ongoing fleet utilization monitoring system, and mandate the use of charge-back rates as a financial incentive for agencies to maintain an optimized fleet size.
• Fleet Acquisition - Develop, formalize and document a policy and process for vehicle specification, solicitation and selection that incorporates best practice elements.
• Fleet Disposal - Conduct an analysis of the cost and benefits of employing various resale methods to dispose of vehicles. Use the results to establish core methods for various types of equipment. formalize and document a policy and process for vehicle disposal that incorporates the best practice elements, including minimizing days to sale and return of funds to the agency fleet. Establish performance metrics to actively monitor and manage disposal outcomes.
• Fleet Maintenance and Repair - Open shops to all agencies; develop standards and consistent shop procedures; consolidate shops; outsource large shops and outsource all sublet repair to a maintenance service provider.
• Fleet Fueling - Review the current state contract for bulk fuel; complete a justification audit of all current sites; develop uniform pricing, chargeback and processing methods; develop and implement a fuel management program; establish electronic interface for fuel, mileage and repair data.37

III. Effect of Proposed Changes:

Section 1 requires the Department of Management Services (DMS) to prepare a plan for the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles. The DMS must submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2017.

The plan must provide a method for:
• Using break-even mileage38 in the assignment and administration of motor vehicles to state agencies and employees to determine when it becomes cost effective to the state to provide assigned motor vehicles to employees;

38 A breakeven analysis identifies the mileage at which vehicles should be purchased as opposed to the state agency reimbursing employees for work mileage in their personal vehicles. See http://www.dms.myflorida.com/content/download/98763/571269/Fleet_Management_Business_Case_Final.pdf (last visited Oct. 26, 2015). Also, see Office of Program Policy Analysis & Governmental Accountability, The Florida Legislature, Centralizing Vehicle Fleet Operations and Implementing Cost-Saving Strategies Could Reduce State Spending, Report No.
• Managing a fleet of motor vehicles for short-term use and shared-use motor vehicle pools;
• Developing a motor vehicle replacement plan and budget, which must take into account operating and maintenance costs of the centralized fleet;
• Purchasing motor vehicles necessary for the operation of the centralized fleet;
• Repairing and maintaining motor vehicles;
• Monitoring the use of motor vehicles and enforcing regulations regarding proper use;
• Maintaining records related to the operation and maintenance of motor vehicles and the administration of the fleet;
• Disposing of motor vehicles that are no longer needed or the use of which is not cost effective;
• Monitoring and managing motor vehicle disposal outcomes to determine the most cost-effective method of disposing fleet vehicles;
• Implementing a fuel management program and a standardized methodology for reporting fuel data;
• Determining when it would be cost-efficient to lease a motor vehicle from a third-party vendor instead of using a state-owned motor vehicle;
• Determining when it would be cost-efficient to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for fleet use; and
• Equipping fleet motor vehicles with real-time locational monitoring systems.

The DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

Section 2 provides that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

11-16 (April 2011) (copy on file with the Governmental Oversight and Accountability Committee). DMS calculated that the breakeven point for assignment of a state-owned vehicle at 7,448 miles driven for a 2010 Ford Fusion, the type of vehicle most state employees require.
V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact of PCS/CS/SB 326 is indeterminate. It is unknown at this time if the DMS would utilize contract services or agency staff to develop the plan required in the bill.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate. The Legislature appropriated $224,000 during the 2013 Session for the FLEET Management Business Case (Business Case), which provided recommendations, a plan, costs and benefits, and implementation timelines. The plan required of the DMS by the bill may have a similar fiscal impact.

The plan required of the DMS, if implemented, may identify significant indeterminate cost-savings to the state comparable to costs and benefits provided in the Business Case. Based on the Business Case, opportunities to achieve cost savings include a five year cumulative benefit of implementing the operating best practice recommendations (estimated at $8.8 million annually) and right sizing recommendations (estimated at $2.1 million annually) that total $26.8 million in projected savings.\(^\text{39}\)

According to the DMS, a thorough fiscal analysis of the costs associated with this bill cannot be conducted with the current Florida Equipment Electronic Tracking (FLEET) system.\(^\text{40}\) The current FLEET system does not provide the granularity in data to assign costs to specific activities.\(^\text{41}\) A new Fleet Management Information system is needed to extract key data elements, track performance, identify costs and provide reports\(^\text{42}\) and has been requested in the agency’s Fiscal Year 2016-2017 Legislative Budget Request for $1,761,243. The DMS has stated that it would need at least two years to collect the data necessary to provide the information requested in the plan, including the time necessary to complete the new system.\(^\text{43}\)

VI. Technical Deficiencies:

None.

\(^{39}\) See https://www.justiceadmin.org/jac/Fleet_Management_Business_Case_Final.pdf (last visited December 17, 2015).

\(^{40}\) See 2016 Department of Management Services Legislative Bill Analysis for SB 326, September 24, 2015 (on file with Senate Appropriation Subcommittee on General Government) at 4.

\(^{41}\) Id.

\(^{42}\) Id.

\(^{43}\) FLEET Management Briefing with DMS staff on December 15, 2015.
VII. Related Issues:
None.

VIII. Statutes Affected:

This bill creates a new section of law that most likely will not be codified in the Florida Statutes because of its time-limited application.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:
Changes the date that the plan is to be submitted from November 1, 2016, to November 1, 2017, which allows the DMS an additional year to prepare the plan.

CS by Governmental Oversight and Accountability on November 17, 2015:
CS/SB 326 differs from SB 326 in the following way:
- The DMS centralized fleet management plan must provide methods for determining when it would be cost effective to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for fleet use rather than providing methods for determining when it would be cost effective to use alternative fuels or to lease or purchase alternative energy motor vehicles for fleet use.

B. Amendments:

None.
Appropriations Subcommittee on General Government (Simpson) recommended the following:

1. **Senate Amendment**
2. 
3. Delete line 18
4. and insert:
5. 1, 2017, the department shall submit the plan to the Governor,
Be It Enacted by the Legislature of the State of Florida:

Section 1. Centralized fleet management plan.—

(1) The Department of Management Services shall prepare a plan regarding the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles. By November 1, 2016, the department shall submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(2) The plan for centralizing all state-owned motor vehicles must provide a method for:

(a) Using break-even mileage in the assignment and administration of motor vehicles to state agencies and employees to determine when it becomes cost effective to the state to provide assigned motor vehicles to employees.

(b) Managing a fleet of motor vehicles for short-term use and shared-use motor vehicle pools.

(c) Developing a motor vehicle replacement plan and budget.

(d) Purchasing motor vehicles necessary for the operation of the centralized fleet.

(e) Repairing and maintaining motor vehicles.

(f) Monitoring the use of motor vehicles and enforcing regulations regarding proper use.

(g) Maintaining records related to the operation and maintenance of motor vehicles and the administration of the fleet.

(h) Disposing of motor vehicles that are no longer needed or the use of which is not cost effective.

(i) Monitoring and managing motor vehicle disposal outcomes to determine the most cost-effective method of disposing fleet vehicles.

(j) Implementing a fuel management program and a standardized methodology for reporting fuel data.

(k) Determining when it would be cost-efficient to lease a motor vehicle from a third-party vendor instead of using a state-owned motor vehicle.

(l) Determining when it would be cost-efficient to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for fleet use.

(m) Equipping fleet motor vehicles with real-time locational monitoring systems.

(3) In developing the plan, the department shall evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of operating and maintaining state-owned motor vehicles; requiring the Department of Management Services to prepare a plan regarding the centralized management of state-owned motor vehicles; requiring the department to submit the plan to the Governor and the Legislature by a specified date; prescribing requirements for the plan; requiring the department to conduct certain evaluations while developing the plan; providing an effective date.

A bill to be entitled An act relating to state-owned motor vehicles; requiring the Department of Management Services to prepare a plan regarding the centralized management of state-owned motor vehicles; requiring the department to submit the plan to the Governor and the Legislature by a specified date; prescribing requirements for the plan; requiring the department to conduct certain evaluations while developing the plan; providing an effective date.
benefits of contracting with a third-party vendor for the
operation and maintenance of a centralized motor vehicle fleet.

Section 2. This act shall take effect upon becoming a law.
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 03/11/2016

Bill Number (if applicable) 326

Amendment Barcode (if applicable)

Topic Government Oversight

Name Antonio Davis

Job Title Veteran Homeless

Address 2313 NW 6th Court

City Fort Lauderdale

State FL

Zip 33311

Phone 762

Email

Speaking: □ For □ Against □ Information

Waive Speaking: □ In Support □ Against

(The Chair will read this information into the record.)

Representing

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.
Feb. 11, 2016

Meeting Date

Topic: State-Owned Motor Vehicles

Name: Bob Nave

Job Title: Vice President, Research

Address: 106 N. Bronough Street
Tallahassee, FL 32301

Phone: 850.222.5052
Email: bnaver@floridataxwatch.org

Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing: Florida TaxWatch

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.
To: Senator Alan Hays, Chair
   Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: November 17, 2015

I respectfully request that Senate Bill #326, relating to State-owned Motor Vehicles, be placed on the:

☑ committee agenda at your earliest possible convenience.
☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22
The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: SB 864
INTRODUCER: Senator Smith
SUBJECT: State Contracts
DATE: February 10, 2016

ANALYST STAFF DIRECTOR REFERENCE ACTION
1. Little McKay CM Favorable
2. Peacock McVaney GO Favorable
3. Davis DeLoach AGG Recommend: Favorable
4. ___________ ___________ ___________ ___________

I. Summary:

SB 864 requires that any state agency contract for services exceeding $35,000 must specify that all call-center services provided pursuant to the contract must be staffed by persons located within the United States.

This bill has an indeterminate fiscal impact.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Chapter 287, F.S., governs the public procurement of personal property and services. The Florida Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and commodity and contractual services needed to support agency activities.\(^1\) The Division of State Purchasing, in the DMS, establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state’s buying power.\(^2\)

Contracts for commodities or contractual services in excess of $35,000 must be procured through a competitive solicitation process.\(^3\) Section 287.058, F.S., outlines the provisions and conditions that must be present in contractual agreements for competitively procured services. The section

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\(^1\) See ss. 287.032 and 287.042, F.S.
\(^2\) Division of Purchasing rules are published under Chapter 60A of the Florida Administrative Code.
\(^3\) Section 287.057(1), F.S., requires a competitive solicitation process for contracts that exceed the Category Two threshold. Category thresholds are listed in s. 287.017, F.S., which identifies contracts exceeding $35,000 as Category Two.
also provides that a contract may be renewed for a period of time upon satisfactory performance evaluations by the agency and subject to the availability of funds.4

Federal law also regulates procurement activities. The most well-known international agreements are the World Trade Organization Government Procurement Agreement (GPA), the North American Free Trade Agreement (NAFTA), and numerous other bilateral free trade agreements (FTA).5 The expansion of international trade between the United States and foreign governments has resulted in many agreements that contain mutually beneficial government procurement obligations. In the spirit of promoting trade relations, governments have agreed to require that each party’s goods and services be given the same treatment as domestic goods and services. As such, a government is prohibited from arbitrarily giving preferential treatment to domestic goods at the expense of foreign goods originating from a country where there is an enforceable and standing trade agreement espousing mutually beneficial government obligations.

World Trade Organization Government Procurement Agreement (GPA)

The agreement that established the World Trade Organization (WTO) came as a result of the Uruguay Rounds of Multilateral Trade Negotiations, which also produced a series of other international agreements, including the GPA.6 As enumerated in the preamble, the GPA’s objective is the expansion of world trade through three primary measures:

- Prohibition on discrimination based on national origin;
- Establishment of clear, transparent laws, regulations, procedures, and practices regarding governmental procurement; and
- Application of competitive procedural requirements related to notification, tendering (bidding), contract award, tender (bid) protest, etc.7

With respect to discrimination on the basis of national origin, Article III of the agreement expressly forbids the application of less favorable treatment to the products, services, and suppliers of other foreign parties than that which would be accorded to domestic products, services, and suppliers.8 The agreement further provides that all parties will ensure that the laws, regulations, procedures, and practice regulating government procurement in their home state will be executed in a nondiscriminatory manner.9

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4 Section 287.058(h), F.S.
5 A list of the federal government’s current procurement obligations under international agreements is available at https://ustr.gov/issue-areas/government-procurement (last visited Jan. 13, 2016).
6 Signatory countries: Armenia, Canada, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia, Bulgaria, Romania, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, and Chinese Taipei.
7 1994 Uruguay Round Agreement on Government Procurement, April 15, 1994, WTO Agreement, Annex 4(b) (hereinafter “GPA”), and see GPA Appendix I (United States), Annex 2 (discusses sub-central government entities, such as Florida), both available at https://www.wto.org/english/docs_e/legal_e/legal_e.htm (last visited Jan. 13, 2016).
8 Id.
9 Id.
The State of Florida was one of 37 states to agree to procure in accordance with the GPA. Presently, Florida’s executive branch is covered under the GPA for purchases that exceed $552,000 for commodities and services and $7,777,000 for construction services.

Free Trade Agreements

In addition to the GPA, the United States has also entered into several bilateral free trade agreements and two multilateral free trade agreements, with the most highly recognized being the NAFTA. Similar to the GPA, these agreements contain provisions that call for fair and non-discriminatory treatment of products, goods, and services by all state parties. When necessary, the United States has issued waivers to protect parties from discriminatory purchasing requirements found under existing law that would be contrary to the covenants embodied in such international agreements.

III. Effect of Proposed Changes:

Section 1 amends s. 287.058, F.S., to require state agency contracts for services in excess of $35,000 to include a provision in the contractual document, stating that any call center services provided pursuant to the contract must be staffed by persons located within the United States.

Section 2 provides that the bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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10 In a letter dated November 7, 1991, Governor Lawton Chiles authorized coverage of Florida under the GATT/WTO Government Procurement Agreement.
11 See Annex 2 (Sub-Central Government Entities), supra, note 7.
12 76 F.R. 76808-01, December 8, 2011.
13 The United States has entered bilateral free trade agreements with the following countries: Australia, Bahrain, Canada, Chile, Israel, Morocco, Oman, Peru, and Singapore. This information is available at http://www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations (last visited Jan. 13, 2016).
14 NAFTA (member countries: United States, Mexico, and Canada) and DR-CAFTA (El Salvador, Dominican Republic, Guatemala, Honduras, Nicaragua, and Costa Rica). This information is available at https://ustr.gov/trade-agreements/free-trade-agreements (last visited Jan. 13, 2016).
D. Other Constitutional Issues:

Requiring call-center services provided pursuant to a contract for services to be staffed by persons within the United States may potentially implicate the Supremacy Clause and the Commerce Clause of the United States Constitution.

**The Federal Commerce Clause and Market Participant Exception**

The Commerce Clause states that Congress shall have the power “to regulate commerce with foreign Nations, and among the several States.” This clause speaks to Congress’ power to regulate both interstate and foreign commerce and acts as a negative constraint upon the states.

The standard for determining whether state action violates the Commerce Clause requires courts to consider whether the state law facially discriminates against foreign commerce, whether the law interferes with the ability of the federal government to speak with one voice, or whether the law attempts to regulate conduct beyond its borders. For this reason, state laws affecting interstate and foreign commerce are reviewed with heightened scrutiny.

The market participant exception may allow state laws to withstand such judicial review under particular circumstances. The exception permits a state to permissibly discriminate against non-residents so long as the state is acting as a “market participant,” rather than a “market regulator.” A state is considered to be a “market participant” when it is acting as an economic actor, such as a purchaser of goods and services.

However, the law is unsettled regarding the applicability of the market participant exception to the Commerce Clause. Under the market participant exception, the United States Court of Appeals for the First Circuit upheld the validity of a Pennsylvania procurement statute that required suppliers contracting with a public agency for public works projects to provide products made of American steel. Conversely, the United States Court of Appeals for the Third Circuit refused to extend the market participant exception and invalidated a Massachusetts law that placed restrictions on the ability of state agencies and authorities to purchase goods or services from individuals or companies that engaged in business with Burma.

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16 U.S. Const. Art. I, s. 8, c. 3.
17 The constraint is often referred to as the dormant Commerce Clause. See Gibbons v. Ogden, 22 U.S. 1 (1824).
18 Japan Line, Ltd. v. County of Los Angeles, 441 U.S. 434, 446 (1970) (“When construing Congress’ power to ‘regulate commerce with foreign Nations,’ a more extensive constitutional inquiry is required.”).
19 See White v. Massachusetts Council of Constr. Employers, Inc., 460 U.S. 204, 208 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).
20 Id.
The Supremacy Clause

The Supremacy Clause grants Congress the power to preempt state law by deeming the United States Constitution and the laws of the United States as the “Law of the Land.” Preemption may occur under three primary circumstances: when Congress expressly preempts the state legislation, when Congress intends to occupy the field, or when a state law is in conflict with federal law.

In *Crosby v. National Foreign Trade Council*, the United States Supreme Court unanimously concluded that a Massachusetts’ law prohibiting state agencies from buying goods or services from companies doing business with Burma was unconstitutional. At the time, the federal government was reassessing its foreign relations status with Burma and Congress had enacted a statute that imposed a set of mandatory and conditional sanctions on Burma. The existence of both the federal and state law created a direct conflict since the Massachusetts law banned all contracts between the state and companies doing business with Burma.

In 2013, using the formula prescribed under *Crosby*, the United States Court of Appeals for the 11th Circuit upheld a challenge to the constitutionality of an amendment to a provision under ch. 287, F.S. The challenged law in *Odebrecht* required a company entering into a procurement contract for goods or services exceeding $1 million to certify that it did not have business operations in Cuba. The Court held that federal law preempted the state law under the circumstances because the state law swept more broadly than federal legislation.

Similarly, SB 864 may implicate foreign relations by requiring that state agency contracts in excess of $35,000 include a provision that all call-center services must be staffed by persons located within the United States. Notably different from the courts’ reasoning in *Crosby* and *Odebrecht*, is that the language of this bill does not appear to be in direct conflict with any federal law. However, federal treaties and executive agreements supporting free trade may still provide a basis for preemption.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 864 could limit the number of private companies qualified to enter into procurement contracts with the state. The DMS, in an agency analysis for a similar bill, stated that

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23 U.S. Const. art. VI, s. 1, c.2.
25 *Id.* at 366.
26 *Odebrecht Constr. v. Sec’y, Fla. DOT*, 715 F.3d 1268 (11th Cir. 2013).
28 *Id.* at 1281.
while the bill may create more American jobs, “large corporations providing worldwide call-center services could have substantial costs associated with requiring these corporations to alter their business models and provide these services within the United States.”

C. Government Sector Impact:

This bill may result in the creation of American jobs due to the requirement that contractors and subcontractors staff call-centers with persons located within the United States. However, this requirement could have fiscal implications, which are unknown, if the cost of domestic labor is higher than the cost of labor in foreign markets.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.058 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

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29 See Department of Management Services Senate Bill Analysis for SB 90 (December 10, 2012), (on file with Senate Appropriations Subcommittee on General Government) on page 2.

30 Id.
By Senator Smith

A bill to be entitled
An act relating to state contracts; amending s. 287.058, F.S.; requiring all state contracts in excess of a certain amount to require that call-center services be staffed by persons located within the United States; providing an effective date.

Section 1. Subsection (1) of section 287.058, Florida Statutes, is amended to read:

(1) A procurement of contractual services in excess of the threshold amount provided under s. 287.017 for CATEGORY TWO, except for the providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by chapter 440, must be evidenced by a written agreement embodying all provisions and conditions for the procurement of such services. As applicable, the agreement must, which shall, where applicable, include, but need not be limited to, a provision:

(a) Requiring that bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper preaudit and postaudit thereof.

(b) Requiring that bills for any travel expenses be submitted in accordance with s. 112.061. A state agency may establish rates lower than the maximum provided in s. 112.061.

(c) Requiring all call-center services provided pursuant to the contract to be staffed by persons located within the United States. This requirement also applies to all call-center services performed by a subcontractor pursuant to the contract.

(d) Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and s. 119.07(1).

(e) Specifying a scope of work which clearly establishes all tasks the contractor is required to perform.

(f) Dividing the contract into quantifiable, measurable, and verifiable units of deliverables which must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify a performance measure. As used in this paragraph, the term “performance measure” means the required minimum acceptable level of service to be performed and criteria for evaluating the successful completion of each deliverable.

(g) Specifying the criteria and the final date by which such criteria must be met for completion of the contract.

(h) Specifying that the contract may be renewed for up to a period that may not exceed 3 years or the term of the original contract, whichever is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply, specifying that costs for the renewal may not be charged, and specifying that renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts

CODING: Words stricken are deletions; words underlined are additions.
pursuant to s. 287.057(3)(a) and (c) may not be renewed.

(i) Specifying the financial consequences that the agency must apply if the contractor fails to perform in accordance with the contract.

(j) Addressing the property rights of any intellectual property related to the contract and the specific rights of the state regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.

In lieu of a written agreement, the agency may authorize the use of a purchase order for classes of contractual services if the provisions of paragraphs (a)-(j) are included in the purchase order or solicitation. The purchase order must include, but need not be limited to, an adequate description of the services, the contract period, and the method of payment. In lieu of printing the provisions of paragraphs (a)-(d) and (h) in the contract document or purchase order, agencies may incorporate the requirements of those paragraphs by reference.

Section 2. This act shall take effect July 1, 2016.
**THE FLORIDA SENATE**

**APPEARANCE RECORD**

(Concern ONLY copies of this form to the Senator or Senate Professional Staff conducting the meeting)

**Meeting Date**

2-11-16

**Bill Number (if applicable)**

SB 864

**Topic**

State Contracts

**Name**

Roger Simmermaker

**Job Title**

Author/ Speaker/ Publisher

**Address**

13112 Aronominke Lane

Orlando, FL 32828

**Phone**

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sb864@law.state.fl.us

**Speaking:**

☒ For   ☐ Against   ☐ Information

**Waive Speaking:**

☐ In Support  ☐ Against

(The Chair will read this information into the record.)

**Representing**

Consumer Patriotism Corp.

**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.**
2-11-16
Meeting Date

Topic  STATE CONTRACTS

Name  JAMES TAYLOR

Job Title  EXECUTIVE DIRECTOR

Address  
Street  Tally
City  State  Zip

Phone  407 715-2386

Email  

Speaking:  [] For  [] Against  [] Information
Waive Speaking:  [] In Support  [] Against
(The Chair will read this information into the record.)

Representing  FLORIDA TECHNOLOGY COUNCIL

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

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

This form is part of the public record for this meeting.
THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date: 10/16

Bill Number (if applicable):

Topic: TAX DOLLARS

Name: GAIL MARIE PERRY

Job Title: CHAIR

Address: P.O. Box 1760
       POMPANO BEACH, FL 33061

Phone: 954-850-4655

Email: workingjob@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing: COMMUNICATIONS WORKERS OF AMERICA

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

APPEARANCE RECORD

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

Meeting Date: 2/11/2016

Bill Number (if applicable): SB 0864

Amendment Barcode (if applicable):

Topic: State Contracts

Name: David E. Singer

Job Title: Citizen/Voter

Address: 1726 133rd Trail N.

City: Jupiter

State: FL

Zip: 33478

Phone: 561-601-1225

Email: 2ds@bellsouth.net

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against

(The Chair will read this information into the record.)

Representing: Self

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

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

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

This form is part of the public record for this meeting.
2-11-2016
Meeting Date

Topic: STATE CONTRACT

Name: FRANK ANGEL

Job Title: 

Address: 2180 VIA EDEN
Boca Raton FL, 33433

Phone: 708-955-6254
Email: 

Speaking: □ For □ Against □ Information

Waive Speaking: X In Support □ Against
(The Chair will read this information into the record.)

Representing: SELF

Appearing at request of Chair: □ Yes X No

Lobbyist registered with Legislature: □ Yes X No

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

This form is part of the public record for this meeting.
The Florida Senate
Committee Agenda Request

To: Senator Alan Hays, Chair
    Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: February 1, 2016

I respectfully request that Senate Bill #864, relating to State Contracts, be placed on the:

☐ committee agenda at your earliest possible convenience.
☒ next committee agenda.

[Signature]

Senator Christopher L. Smith
Florida Senate, District 31

File signed original with committee office
I. Summary:

CS/SB 912 addresses fraudulent activity occurring at fuel stations by:

- Increasing from a third degree felony to a second degree felony the penalty for the unlawful conveyance of fuel;
- Requiring a retail petroleum fuel measuring device to have affixed to or installed onto the measuring device at least one security measure;
- Authorizing the Department of Agriculture and Consumer Services (DACS) to prohibit further use of the measuring device until a security measure is installed, replaced, or repaired;
- Punishing the attempt to traffic in or trafficking in five, rather than 10, counterfeit credit cards as a second degree felony;
- Indicating that possession of counterfeit cards is unlawful; and
- Increasing the offense severity level ranking for unlawful conveyance of fuel and trafficking in or possession of counterfeit credit cards.

The bill has an insignificant fiscal impact on state funds. On January 5, 2016, the Criminal Justice Impact Conference determined that the bill will have a positive insignificant impact on state prison beds which means that the bill will require ten or fewer additional prison beds.

The bill provides an effective date of October 1, 2016.
II. Present Situation:

Fraudulent Activity Occurring at Fuel Stations

The Department of Agriculture and Consumer Services (DACS) states:

The DACS is responsible for conducting inspections of the petroleum distribution system and analyzing samples of petroleum products to ensure consumers are being offered quality products at a fair measure. In fulfilling this responsibility, the DACS inspects pumps for devices that steal credit card information from unknowing consumers—commonly called “skimmers.”

Current law does not require security measures to be in place to reduce the possibility of placing skimmers into pumps or alerting the consumer that a pump has been opened. The consumer is victimized by credit card theft, while the retailer is victimized by fraudulent fuel purchases. Through elaborate schemes to defraud, a consumers’ information obtained by a skimmer is often used to purchase gasoline fraudulently and subsequently sold on the black market. In some cases, gas stations are losing thousands of dollars a day in the theft of fuel by use of counterfeit/compromised credit cards.

Penalties presently for the theft of fuel depend on the amount stolen as with any other product.¹

Unlawful Conveyance of Fuel

Section 316.80(1), F.S., provides that it is unlawful for any person to maintain, or possess any conveyance or vehicle that is equipped with, fuel tanks, bladders, drums, or other containers that do not conform to 49 C.F.R. or have not been approved by the United States Department of Transportation for the purpose of hauling, transporting, or conveying motor or diesel fuel over any public highway.

Section 316.80(2), F.S., provides that any person who violates subsection (1) commits a third degree felony, if he or she has attempted to or has fraudulently obtained motor or diesel fuel by:

- Presenting a credit card or a credit card account number in violation of ss. 817.57-817.685, F.S.;²
- Using unauthorized access to any computer network in violation of s. 815.06, F.S.; or
- Using a fraudulently scanned or lost or stolen payment access device, whether credit card or contactless device.

¹ Analysis of SB 912 (November 24, 2015), Florida Department of Agriculture and Consumer Services (on file with the Senate Committee on Criminal Justice).
² A number of payment card offenses are included in the referenced statutes, including use of a scanning device or reencoder to access and store information on the payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user’s card, or a merchant. Section 817.625, F.S.
The described offense is not currently ranked in the offense severity level ranking chart in s. 931.0022, F.S. A third degree felony that is not ranked in the chart is ranked as a Level 1 offense pursuant to the “default” provisions of s. 921.0023, F.S.

**Trafficking In or Possession of Counterfeit Cards**

Section 817.611, F.S., provides that it is a second degree felony for a person to traffic in or attempt to traffic in 10 or more counterfeit credit cards, invoices, vouchers, sales drafts, or other representations or manifestations of counterfeit credit cards, or credit card account numbers of another in any six-month period. Relevant to the bill, this offense does not specifically state that possession of counterfeit credit cards is unlawful.

The described offense is not currently ranked in the offense severity level ranking chart in s. 931.0022, F.S. A second degree felony that is not ranked in the chart is ranked as a Level 4 offense pursuant to the “default” provisions of s. 921.0023, F.S.

**III. Effect of Proposed Changes:**

CS/SB 912 addresses fraudulent activity occurring at fuel stations in the following manner:

- Amends s. 316.80(2), F.S., to increase the felony degree for unlawful conveyance of fuel from a third degree felony (maximum penalty of five years in state prison)\(^3\) to a second degree felony (maximum penalty of 15 years in state prison).\(^4\)

- Amends s. 921.0022, F.S., to rank the offense of unlawful conveyance of fuel in Level 5 of the offense severity level ranking chart. Currently, this offense is ranked in Level 1. An offender with a Level 1 primary offense would likely score a nonstate prison sanction as the lowest permissible sentence absent significant prior convictions. The possibility of a defendant receiving a prison sentence is greater if the offense is in Level 5 than Level 1. A Level 5 offense is considered to be more serious than a Level 1 offense and accrues more sentence points. A defendant with a Level 5 offense would score a lowest permissible sentence within the sentencing range in which a court may impose a prison sentence.

- Amends s. 525.07, F.S., (powers and duties of the DACS) to:
  - Require each person who owns or manages a retail petroleum fuel measuring device to have affixed to or installed onto the measuring device at least one listed security measure to restrict the unauthorized access of customer payment card information;
  - Specify security measures;\(^5\)
  - Specify that the owner of a measuring device with a security measure or with an altered or damaged security measure, upon written notice of noncompliance from the DACS, has five calendar days to comply with security measure requirements;
  - Provide that after the fifth day of noncompliance, the DACS may prohibit further use of the measuring device until a security measure is installed, replaced, or repaired and that a

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\(^{3}\) Section 775.082, F.S.

\(^{4}\) *Id.*

\(^{5}\) Security measures include: placement of a pressure-sensitive security tape over the panel opening that leads to the scanning device for the measuring device in a manner that will restrict the unauthorized opening of the panel; a device or system that will render the measuring device or scanning device in the measuring device inoperable if there is an unauthorized opening of the panel; a device or system that encrypts the customer payment card information in the scanning device; or another security measure approved by the FDACS.
repeat violation found on the same device will be cause for the DACS to immediately take the device out of service;
  o Specify that the terms “scanning device” and “payment card” have the same meanings as defined in s. 817.625, F.S.;\(^6\) and
  o Provide that this provision only applies to retail petroleum fuel measuring devices that have a scanning device.

- Amends s. 817.611, F.S, which currently punishes trafficking in 10 or more counterfeit credit cards, etc., to reduce the number of cards from 10 to five, and specify that this offense also includes possession, which is not currently specifically included in the offense.

The bill does not change the felony degree of trafficking in or possession of counterfeit cards (second degree felony) but does amend s. 921.0022, F.S., to rank this offense in Level 5 of the offense severity level ranking chart. Currently, this offense is a Level 4 offense. The possibility of a defendant receiving a prison sentence is greater if the offense is in Level 5 than Level 4. A Level 5 offense accrues more sentence points than a Level 4 offense. A defendant with a Level 5 offense is more likely to score a lowest permissible sentence that is within the sentencing range in which a court may impose a prison sentence.

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 912 may have a fiscal impact on owners or managers of retail petroleum fuel measuring devices due to the requirements for the installation of one or more security measures on such devices.

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\(^6\) “Scanning device” means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card. Section 817.625(1)(a), F.S. “Payment card” means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant. Section 817.625(1)(c), F.S.
C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact of legislation, estimated that the original bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds). Changes to the original bill incorporated in CS/SB 912 do not impact that estimate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.80, 525.07, 817.611, and 921.0022.

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 Criminal Justice on January 25, 2016:

- Requiring that each person who owns or manages a retail petroleum fuel measuring device have affixed to or installed onto the measuring device a security measure to restrict the unauthorized access of customer payment card information;
- Providing that the security measure must include one or more specified security measures;
- Providing that the owner or manager of a retail petroleum fuel measuring device without a security measure or with an altered or damaged security measure, upon written notice from the department of such noncompliance, shall have five calendar days to comply; and
- Providing that after the fifth day of noncompliance, the department may prohibit further use of the retail petroleum fuel measuring device until a security measure is installed, replaced, or repaired.

B. Amendments:

None.
By the Committee on Criminal Justice; and Senator Flores

Section 1. Subsection (2) of section 316.80, Florida Statutes, is amended to read:

(a) Give, in writing, the operator or owner or manager of:

1. A bill to be entitled
2. An act relating to fraudulent activities associated with payment systems; amending s. 316.80, F.S.; revising the felony classification for unlawful conveyance of fuel; amending s. 525.07, F.S.; specifying requirements for managers of petroleum fuel measuring devices with respect to accurate measurement; requiring retail petroleum fuel measuring devices fitted with scanning devices to have certain security measures; providing requirements for such measures; requiring the owner or operator of a device to have certain security measures in place within a specified timeframe upon notice from the Department of Agriculture and Consumer Services; authorizing the department, under certain circumstances, to prohibit use of or to remove from service such devices that are noncompliant; defining terms; providing applicability; requiring the Department of Agriculture and Consumer Services to enforce provisions; providing for rulemaking; amending s. 817.611, F.S.; reducing the number of counterfeit credit cards that a person can be in possession of to qualify as unlawful; amending s. 921.0022, F.S.; ranking unlawful conveyance or fraudulent acquisition of fuel as a level 5 offense; ranking trafficking in or possession of counterfeit credit cards as a level 5 offense; providing an effective date.

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

Section 1. Subsection (2) of section 316.80, Florida Statutes, is amended to read:

316.80 Unlawful conveyance of fuel; obtaining fuel fraudulently.—

(2) A any person who violates subsection (1) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she has attempted to or has fraudulently obtained motor or diesel fuel by:

(a) Presenting a credit card or a credit card account number in violation of ss. 817.57-817.685;

(b) Using unauthorized access to any computer network in violation of s. 815.06; or

(c) Using a fraudulently scanned or lost or stolen payment access device, whether credit card or contactless device.

Section 2. Subsections (3) and (4) of section 525.07, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

525.07 Powers and duties of department; inspections; unlawful acts.—

(3) Each person who owns or manages all persons who own or operate a petroleum fuel measuring device shall be responsible for ensuring accurate measure by the device within the tolerances defined by the rule. An appropriate security seal shall be placed on all measuring devices found to be giving accurate measure within the tolerances defined by the department in such a way that the metering adjustment cannot be changed without breaking the seal.

(4) A any measuring device that is found to be operating outside the tolerances defined by the department shall be deemed inaccurate and the department, at its discretion, shall either:

(a) Give, in writing, the operator or owner or manager of
the measuring device a reasonable time to repair the measuring device; or

(b) Condemn or prohibit the further use of the measuring device by using an appropriate security seal to obstruct the mechanism so that it cannot be operated without breaking the seal. The measuring device shall not be operated in this state again without the written consent of the department.

(10)(a) Each person who owns or manages a retail petroleum fuel measuring device shall have affixed to or installed onto the measuring device a security measure to restrict the unauthorized access of customer payment card information. The security measure must include one or more of the following:

1. The placement of pressure-sensitive security tape over the panel opening that leads to the scanning device for the retail petroleum fuel measuring device in a manner that will restrict the unauthorized opening of the panel.

2. A device or system that will render the retail petroleum fuel measuring device or the scanning device in the measuring device inoperable if there is an unauthorized opening of the panel.

3. A device or system that encrypts the customer payment card information in the scanning device.

4. Another security measure approved by the department.

(b) The owner or manager of a retail petroleum fuel measuring device without a security measure or with an altered or damaged security measure, upon written notice from the department of such noncompliance, shall have 5 calendar days to comply with this subsection. After the fifth day of noncompliance, the department may prohibit further use of the measuring device until a security measure is installed, replaced, or repaired. A repeat violation found on the same retail petroleum fuel measuring device will be cause for the department to immediately take the measuring device out of service.

(c) For purposes of this subsection, the terms "scanning device" and "payment card" have the same meanings as defined in s. 817.625.

(d) This subsection applies only to retail petroleum fuel measuring devices that have a scanning device.

Section 3. Section 817.611, Florida Statutes, is amended to read:

817.611 Traffic in or possess counterfeit credit cards.—Any person who traffics in, attempts to traffic in, or possesses 5 or more counterfeit credit cards, invoices, vouchers, sales drafts, or other representations or manifestations of counterfeit credit cards, or credit card account numbers of another in any 6-month period is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Paragraph (e) of subsection (3) of section 921.022, Florida Statutes, is amended to read:

921.022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

<table>
<thead>
<tr>
<th>Florida Statute</th>
<th>Felony Degree</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section</td>
<td>Code</td>
<td>Type</td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>316.027(2)(a)</td>
<td>3rd</td>
<td>Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.</td>
</tr>
<tr>
<td>316.1935(4)(a)</td>
<td>2nd</td>
<td>Aggravated fleeing or eluding.</td>
</tr>
<tr>
<td>316.80(2)</td>
<td>2nd</td>
<td>Unlawful conveyance; obtaining fuel fraudulently.</td>
</tr>
<tr>
<td>322.34(6)</td>
<td>3rd</td>
<td>Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.</td>
</tr>
<tr>
<td>327.30(5)</td>
<td>3rd</td>
<td>Vessel accidents involving personal injury; leaving scene.</td>
</tr>
<tr>
<td>379.367(4)</td>
<td>3rd</td>
<td>Willful molestation of a commercial harvester’s spiny lobster trap, line, or buoy.</td>
</tr>
<tr>
<td>379.3671(2)(c)3.</td>
<td>3rd</td>
<td>Willful molestation, possession, or removal of a commercial harvester’s trap contents or trap gear by another harvester.</td>
</tr>
<tr>
<td>381.0041(11)(b)</td>
<td>3rd</td>
<td>Donate blood, plasma, or organs knowing HIV positive.</td>
</tr>
<tr>
<td>440.10(1)(g)</td>
<td>2nd</td>
<td>Failure to obtain workers’ compensation coverage.</td>
</tr>
<tr>
<td>440.105(5)</td>
<td>2nd</td>
<td>Unlawful solicitation for the purpose of making workers’ compensation claims.</td>
</tr>
<tr>
<td>440.381(2)</td>
<td>2nd</td>
<td>Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers’ compensation.</td>
</tr>
</tbody>
</table>
591-02542-16

132 624.401(4)(b)2. 2nd Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.

133 626.902(1)(c) 2nd Representing an unauthorized insurer; repeat offender.

134 790.01(2) 3rd Carrying a concealed firearm.

135 790.162 2nd Threat to throw or discharge destructive device.

136 790.163(1) 2nd False report of deadly explosive or weapon of mass destruction.

137 790.221(1) 2nd Possession of short-barreled shotgun or machine gun.

138 790.23 2nd Felons in possession of firearms, ammunition, or electronic weapons or devices.

139 796.05(1) 2nd Live on earnings of a prostitute; 1st offense.

140 800.04(6)(c) 3rd Lewd or lascivious conduct; offender less than 18 years of age.

141 800.04(7)(b) 2nd Lewd or lascivious exhibition; offender 18 years of age or older.

142 806.111(1) 3rd Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.

143 812.0145(2)(b) 2nd Theft from person 65 years of age or older; $10,000 or more but less than $50,000.

144 812.015(8) 3rd Retail theft; property stolen is valued at $300 or more and one or more specified acts.

CODING: Words stricken are deletions; words underlined are additions.
812.019(1) 2nd Stolen property; dealing in or trafficking in.

812.131(2)(b) 3rd Robbery by sudden snatching.

812.16(2) 3rd Owning, operating, or conducting a chop shop.

817.034(4)(a)2. 2nd Communications fraud, value $20,000 to $50,000.

817.568(2)(b) 2nd Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.

817.611 2nd Traffic in or possess counterfeit credit cards.

817.625(2)(b) 2nd Second or subsequent fraudulent use of scanning device or reencoder.

825.1025(4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

827.071(4) 2nd Possess with intent to...
591-02542-16

promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

158

827.071(5) 3rd Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

159

839.13(2)(b) 2nd Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

160

843.01 3rd Resist officer with violence to person; resist arrest with violence.

161

847.0135(5)(b) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

162

847.0137 3rd Transmission of pornography by electronic device or equipment.

163

847.0138 3rd Transmission of material harmful to minors to a minor by electronic device or equipment.

164

874.05(1)(b) 2nd Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

165

874.05(2)(a) 2nd Encouraging or recruiting person under 13 years of age to join a criminal gang.

166

893.13(1)(a)1. 2nd Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

167

893.13(1)(c)2. 2nd Sell, manufacture, or
deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of property used for religious services or a specified business site.

Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of university.

Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of public housing facility.

Sell, manufacture, or deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
Section 5. This act shall take effect October 1, 2016.
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date
6/11/2016

Bill Number (if applicable)
912

Amendment Barcode (if applicable)

Topic Criminal Justice

Name Antonio Davis

Job Title Veteran

Address 2313 NW 17th Court

Street

F Lauderdale FL 33311

City State Zip

Phone

Email

Speaking: □ For □ Against □ Information
Waive Speaking: □ In Support □ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: □ Yes X 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 (10/14/14)
Gas Pump Skimmers
Melissa Ramba
VP Government Affairs
227 S Adams ST.
Tallahassee, FL
850-510-0269
Florida Retail Federation
Yes
Yes
This form is part of the public record for this meeting.
2/1/14
Meeting Date

SB0912
Bill Number (if applicable)

Fraudulent Activities w/ Payment sys
Amendment Barcode (if applicable)

Don Heaton
Name

Lieutenant
Job Title

123 W. Indiago Ave
Address

Deland, FL
City State Zip

386-804-6825
Phone

dheaton@ucso.us
Email

Speaking: ☑ For ☐ Against ☐ Information
Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Valusin County Sheriff's Office/ Florida Sheriffs' Assoc

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: 2/11/16

Bill Number (if applicable): SB 912

Amendment Barcode (if applicable):

Topic: Fraudulent Activities Associated w/ Payment Systems

Name: Jared Ross

Job Title: SVP Governmental Affairs

Address: 3692 Coolidge Ct. Tallahassee, FL 32311

Phone: (850) 322-6954

Email: jared.ross@lswcorp.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing: Florida Credit Union 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 (10/14/14)
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 2/11/16

SB 912

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Fraudulent Activities Associated with Payment Systems

Name Jonathon Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Tallahassee, FL 32399

Phone (850) 617-7700

Email Jonathon. Rees E freshfromflorida.com

Speaking: □ For □ Against □ Information Waive Speaking: [X] In Support □ Against
(The Chair will read this information into the record.)

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair: □ Yes [X] No Lobbyist registered with Legislature: [X] Yes □ No

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

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

Appearance Record

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

Meeting Date: 2/11/2016

Bill Number: SB 912

Topic: Fraudulent Activities Associated with Payment Systems

Amendment Barcode: (if applicable)

Name: Bernadette Howard

Job Title: Government Affairs Committee

Address: 20316 Mitcham Drive

Tallahassee, FL 32308

Phone: 850-219-3631

Email: bhoward@fpcul.org

Speaking: [ ] For  [ ] Against  [ ] Information

Waive Speaking: [x] In Support  [ ] Against

(The Chair will read this information into the record.)

Representing: The Florida Police Chiefs Association

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

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

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

This form is part of the public record for this meeting.
2/11/16

Meeting Date

Topic Fraudulent Activities Related to Payment Systems

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Tallahassee FL 32312

Phone 224-7173

Email bbevis@aif.com

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [✓] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Associated Industries 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.
I. Summary:

PCS/SB 922:

- Establishes a waste tire abatement program and provides for funding of the program;
- Deletes the waste tire grant program and authorizes the small county consolidated grant program to provide grants for waste tire abatement;
- Amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000;
- Recreates and modifies provisions related to the solid waste landfill closure account;
- Provides authority to the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient;
- Expands the authority of the DEP to provide funding for the closure and long-term care of solid waste management facilities;
- Expands the types of financial assurances permittees may provide for closure and long-term care of solid waste management facilities; and
- Authorizes funds to be used for closure and long-term care of waste management facilities that are not required to have an operating permit.

The bill authorizes the DEP to use funds from the Solid Waste Management Trust Fund to pay for costs not covered by insurance policies or alternative forms of financial assurances. These costs could have a significant fiscal impact to the Solid Waste Management Trust Fund.
Except as otherwise expressly provided in this act, this act takes effect on July 1, 2016.

II. Present Situation:

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering; waste tire fees; and oil related fees, fines and penalties. The Department of Environmental Protection (DEP) must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.

Landfill Closure

Pursuant to section 403.704, F.S., the DEP is responsible for implementing and enforcing the state solid waste management program, which provides the guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Florida Administrative Code Chapters 62-701 to 62-722, establish standards for the construction, operation, and closure of solid waste management facilities and provisions governing other aspects of Florida’s solid waste management program. Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. Closure plans include:

- A design plan;
- A closure operation plan;
- A long-term care plan; and
- Proof of financial assurance, which may include closure insurance, for long-term care and a cost estimate for closure pursuant to Florida Administrative Code Rule 62-701.630.

Section 403.7125, F.S., provides that the owner or operator of a landfill is responsible for the closure of the landfill and is liable for its improper closure. The owner or operator of a federal,
state, or local government owned landfill is required to establish a fee to ensure the financial resources are available for the closure of the landfill.

Prior to receiving a permit to operate a landfill or construction and demolition debris disposal facility, the owner or operator of the facility must provide financial assurance to assure the availability of financial resources to properly close and provide long-term care of the landfill.\(^5\) To establish the amount of financial assurance, the owner must estimate the cost of closure and long-term maintenance as part of a landfill permit application.\(^6\) The owner must update the cost estimate annually.\(^7\) Allowable financial mechanisms include irrevocable letters of credit, financial guarantee bonds, performance bonds, financial tests, corporate guarantee, trust fund agreements, and insurance certificates.\(^8\) Government entities that operate a landfill may also use a landfill management escrow account as a financial assurance instrument.\(^9\)

Operators of solid waste disposal units must receive a closure permit to close a landfill.\(^10\) Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility’s approved closure plan.\(^11\)

These facilities must also perform long-term care for 30 years.\(^12\) This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.\(^13\)

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by the DEP; and
- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

\(^12\) Fla. Admin. Code R. 62-701.620(1)
\(^13\) Id.
The closure account was created within the 2015 implementing bill, SB 2502-A, and is set to expire July 1, 2016.\(^\text{14}\)

The DEP is currently using this authority and funds from the SWMTF landfill closure account to enter into contracts with a third party for closure construction and related environmental services to close facilities where an insurance policy was used to provide financial assurance.\(^\text{15}\) Funds are being used to enter into contracts for closure activities and then receive reimbursement funds from insurers, up to the limits of coverage under the insurance. Landfills being addressed in this manner are:
- Williams Road (Hillsborough County);
- Coyote Navarre (Santa Rosa County);
- Coyote East (Walton County);
- Coyote West (Walton County); and
- Cerny Road (Escambia County).\(^\text{16}\)

**Waste Tire Abatement**

The solid waste management grant program receives up to 37 percent of the funds deposited into the SWMTF. Up to 50 percent of the funds are for a consolidated grant program for small counties with populations fewer than 100,000, and grants are distributed to eligible counties equally. Programs supported by the consolidated grant program include:
- General solid waste management;
- Litter prevention and control; and
- Recycling and education programs.\(^\text{17}\)

Section 403.7095(2), F.S., also directs the DEP to develop a waste tire grant program within the solid waste management grant program funded by up to 50 percent of the funds distributed from the SWMTF to make grants available to all counties. At least 25 percent of the funds are distributed equally to each county with a population fewer than 100,000. The remaining funds are distributed to counties with populations greater than 100,000 and are distributed on the basis of population.\(^\text{18}\) Grants may be used for activities such as:
- Construction of waste tire processing facilities;
- Operation of waste tire processing facilities;
- Contracting for waste tire facility service;
- Equipment for waste tire processing facilities;
- Removal of waste tires;
- Purchasing materials made from waste tires;
- Research to facilitate waste tire recycling;
- Establishing waste tire collection centers;
- Incentives for establishing private waste tire collection centers; and

\(^{14}\) Ch. 2015-222, s. 53, Laws of Fla.
\(^{16}\) Id.
\(^{17}\) Section 403.7095(1), F.S.
\(^{18}\) Section 403.7095(2), F.S.
• Performing or contracting for enforcement activities.\(^{19}\)

According to the DEP, funding for waste tire grants for all counties was last appropriated during the 2003 legislative session.\(^{20}\) Funding for DEP’s waste tire abatement program, which provides for identification, evaluation, and cleanup of waste tire sites,\(^{21}\) has not received funds since 2009.\(^{22}\) The DEP has identified more than 440,000 tires located at 26 sites in Florida.\(^{23}\) The number of tires at these sites range from 1,500 to over 250,000. Preliminary abatement cost estimates per site range from $2,704 to $570,900. The DEP’s preliminary abatement cost estimate for all 26 sites is $961,390.\(^{24}\)

III. Effect of Proposed Changes:

Section 1 amends s. 403.709, F.S., to allow up to five percent of the 37 percent of funds from the SWMTF designated for the solid waste management grant program to be used for a waste tire abatement program.

The bill revises the solid waste landfill closure account to authorize the Department of Environmental Protection (DEP) to provide funding for the closing and long-term care of a solid waste management facility. If the DEP contracts with a third party, the bill expands the DEP’s authority by:

• Authorizing the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if the facility was not required to obtain a permit to operate from the DEP. This serves to increase the number of facilities that the DEP may provide funding for cleanup.

• Allowing the DEP to use funds from the solid waste landfill closure account when the permittee provided an acceptable alternative form of sufficiently documented financial assurance, for closing and long-term care of a solid waste management facility. This would also increase the number of facilities that the DEP may provide funding for cleanup.

The bill provides that funds received from other parties, rather than just an insurer, for reimbursing the costs of closing or long-term care of a facility are to be deposited in the solid waste landfill closure account.

The bill provides that if the funds available under an insurance policy or an alternative form of financial assurance are insufficient or otherwise unavailable to perform or complete the closing or long-term care of a facility, the DEP may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the


\(^{23}\) *Id.*

\(^{24}\) *Id.*
approved facility closure or long-term care activities. This will expand the circumstances under which the DEP may expend funds for closure and long-term care.

Section 2 amends s. 403.7095, F.S., effective upon becoming law, to remove provisions establishing the waste tire grant program.

The bill expands the allowable uses of funds from the small county consolidated grant program by adding waste tire abatement to the list of programs that may be supported by the grant program.

The bill amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000.

The bill removes an obsolete provision that expired July 1, 2015, directing the DEP to award $3,000,000 in grants equally to counties with populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs.

Sections 3 and 4 reenact ss. 403.413 and 403.7032, F.S., due to changes made by the bill.

Section 5 Except as otherwise expressly provided in this act, this act takes effect on July 1, 2016.

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:

PCS/SB 922 may provide a positive fiscal impact for small counties with a waste tire abatement program.
The bill authorizes the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for facility closures or long-term care activities that are not covered from insurance policies or alternative forms of financial assurance. This could have a negative, indeterminate fiscal impact on the Solid Waste Management Trust Fund.

The DEP does not currently have any budget authority to pay for solid waste closure activities; however, the DEP requested $1 million in their Legislative Budget Request. SB 2500, the Senate proposed 2016-2017 General Appropriations Bill, includes $1 million for this purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.709 and 403.7095.

The bill reenacts the following sections of the Florida Statutes: 403.413 and 403.7032.

IX. Additional Information:

A. Committee Substitute –Statement of Changes:

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

   Recommended CS by Appropriations Subcommittee on General Government on February 11, 2016:
   The CS provides authority to the Department of Environmental Protection to use funds from the Solid Waste Management Trust Fund, instead of the solid waste landfill closure account, to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient.

   The CS makes amendments to s. 403.7095, F.S., effective upon becoming law and amends the eligibility for grant funding to small counties with populations fewer than 110,000 instead of counties with populations fewer than 100,000.

   The CS changes the effective date of the bill from July 1, 2016, to except as otherwise expressly provided in the act, the act takes effect on July 1, 2016.
B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
Appropriations Subcommittee on General Government (Dean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 77 - 185 and insert:

otherwise unavailable, to perform or complete the facility closing or long-term care under this subsection, and the department has used all such funds from the insurance policy or alternative form of financial assurance, the department may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or
completing the approved facility closure or long-term care activities.

(5)(a) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has or had a department permit to operate the facility;
2. The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
3. The facility is deemed to be abandoned or was ordered to close by the department;
4. Closure is accomplished in substantial accordance with a closure plan approved by the department; and
5. The department has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

(b) The department shall deposit the funds received from the insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.

(c) This subsection expires July 1, 2016.

Section 2. Effective upon becoming a law, section 403.7095, Florida Statutes, is amended to read:

403.7095 Solid waste management grant program.
(1) The department shall develop a consolidated grant program for small counties having populations fewer than 100,000, with grants to be distributed equally among eligible counties. Programs to be supported with the small-county consolidated grants include those for the purpose of general solid waste management, litter prevention and control, waste tire abatement, and recycling and education programs.

(2) The department shall develop a waste tire grant program making grants available to all counties. The department shall ensure that at least 25 percent of the funding available for waste tire grants is distributed equally to each county having a population fewer than 100,000. Of the remaining funds distributed to counties having a population of 100,000 or greater, the department shall distribute those funds on the basis of population.

(3) From the funds made available pursuant to s. 403.709(1)(e) for the grant program created by this section, the following distributions shall be made:

(a) Up to 50 percent for the program described in subsection (1); and

(b) Up to 50 percent for the program described in subsection (2).

(2)(4) The department may adopt rules necessary to administer this section, including, but not limited to, rules governing timeframes for submitting grant applications, criteria for prioritizing, matching criteria, maximum grant amounts, and allocation of appropriated funds based upon project and applicant size.

(5) Notwithstanding any other provision of this section,
and for the 2014-2015 fiscal year only, the Department of Environmental Protection shall award the sum of $3 million in grants equally to counties having populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs. This subsection expires July 1, 2015.

Section 3. For the purpose of incorporating the amendments made by this act to section 403.7095, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 403.413, Florida Statutes, is reenacted to read:

403.413 Florida Litter Law.—
(6) PENALTIES; ENFORCEMENT.—
(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes is guilty of a noncriminal infraction, punishable by a civil penalty of $100, from which $50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

Section 4. For the purpose of incorporating the amendments made by this act to section 403.7095, Florida Statutes, in a reference thereto, paragraph (h) of subsection (5) of section 403.7032, Florida Statutes, is reenacted to read:

403.7032 Recycling.—
(5) The Department of Environmental Protection shall create the Recycling Business Assistance Center by December 1, 2010. In carrying out its duties under this subsection, the department
shall consult with state agency personnel appointed to serve as economic development liaisons under s. 288.021 and seek technical assistance from Enterprise Florida, Inc., to ensure the Recycling Business Assistance Center is positioned to succeed. The purpose of the center shall be to serve as the mechanism for coordination among state agencies and the private sector in order to coordinate policy and overall strategic planning for developing new markets and expanding and enhancing existing markets for recyclable materials in this state, other states, and foreign countries. The duties of the center must include, at a minimum:

(h) Providing evaluation of solid waste management grants, pursuant to s. 403.7095, to reduce the flow of solid waste to disposal facilities and encourage the sustainable recovery of materials from Florida’s waste stream.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2016.

And the title is amended as follows:

Delete lines 13 – 28

and insert:

the department to deposit certain funds into the solid waste landfill closure account; authorizing the department to use funds from the Solid Waste Management Trust Fund to pay for or reimburse specified expenses under certain circumstances; deleting a solid waste landfill closure account within the Solid Waste Management Trust Fund; amending s.
403.7095, F.S.; authorizing waste tire abatement programs under the small county consolidated grant program; removing the waste tire abatement program supported by the solid waste management grant program; removing distribution requirements; deleting an obsolete provision; reenacting ss. 403.413(6)(a) and 403.7032(5)(h), F.S., relating to the Florida Litter Law and recycling, respectively, to incorporate the amendments made to s. 403.7095, F.S., in references thereto; providing effective dates.
Appropriations Subcommittee on General Government (Dean) recommended the following:

Senate Amendment to Amendment (891642)

Delete line 42 and insert: 
110,000 100,000, with grants to be distributed equally among eligible
By Senator Montford

3-00576A-16

A bill to be entitled An act relating to solid waste management; amending s. 403.709, F.S.; providing for the funding of a waste tire abatement program from the Solid Waste Management Trust Fund up to a specified percentage of total funds; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund; specifying the purpose of the account; authorizing the Department of Environmental Protection to use account funds to contract with a third party for the closing and long-term care of solid waste management facilities under specified circumstances; requiring the department to deposit certain funds into the solid waste landfill closure account; authorizing the department to use funds from the account to pay for or reimburse specified expenses under certain circumstances; deleting a solid waste landfill closure account within the Solid Waste Management Trust Fund; amending s. 403.7095, F.S.; authorizing waste tire abatement programs under the small county consolidated grant program; removing the waste tire abatement program supported by the solid waste management grant program; removing distribution requirements; deleting an obsolete provision; reenacting ss. 403.413(6)(a) and 403.7032(5)(h), F.S., relating to the Florida Litter Law and recycling, respectively, to incorporate the amendments made to s. 403.7095, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (e) of subsection (1) and subsection (5) of section 403.709, Florida Statutes, are amended, present subsections (2) through (4) of that section are redesignated as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(1) From the annual revenues deposited in the trust fund, unless otherwise specified in the General Appropriations Act:

(e) Up to 37 percent shall be used for funding a waste tire abatement program and a solid waste management grant program pursuant to s. 403.7095 for activities relating to recycling and waste reduction, including waste tires requiring final disposal.

Of the funding specified in this paragraph, no more than 5 percent of the total may be used for funding the waste tire abatement program.

(2) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities.

(a) The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has, had, or was not required to obtain a department permit to operate the facility;

2. The permittee, where required by permit or rule,
3-00576A-16  2016922__

provided proof of financial assurance for closure in the form of
an insurance certificate or an alternative form of financial
assurance mechanism established pursuant to s. 403.7125;

3. The department has ordered the facility closed or has
deemed the facility abandoned;

4. The closure of the facility is accomplished in
substantial accordance with a closure plan approved by the
department; and

5. The department has sufficient documentation to confirm
that the issuer of the insurance policy or alternative form of
financial assurance will provide or reimburse the funds required
to complete the closing and long-term care of the facility.

(b) The department shall deposit all funds received from
the insurer or other parties for reimbursing the costs of
closing or long-term care of the facility under this subsection
into the solid waste landfill closure account.

(c) If the amount available under the insurance policy or
alternative form of financial assurance is insufficient, or is
otherwise inaccessible, to perform or complete the facility
closing or long-term care under this subsection, and the
department has used all such funds from the insurance policy or
alternative form of financial assurance, the department may use
funds from the solid waste landfill closure account to pay for
or reimburse additional expenses needed for performing or
completing the approved facility closure or long-term care
activities.

43. (a) Notwithstanding subsection (1), a solid waste
landfill closure account is established within the Solid Waste
Management Trust Fund to provide funding for the closing and

CODING: Words **stricken** are deletions; words **underlined** are additions.
solid waste management, litter prevention and control, waste tire abatement, and recycling and education programs.

(2) The department shall develop a waste tire grant program making grants available to all counties. The department shall ensure that at least 25 percent of the funding available for waste tire grants is distributed equally to each county having a population fewer than 100,000. Of the remaining funds distributed to counties having a population of 100,000 or greater, the department shall distribute those funds on the basis of population.

(3) From the funds made available pursuant to s. 403.709(1)(a) for the grant program created by this section, the following distributions shall be made:

(a) Up to 50 percent for the program described in subsection (1); and

(b) Up to 50 percent for the program described in subsection (2).

(4) The department may adopt rules necessary to administer this section, including, but not limited to, rules governing timeframes for submitting grant applications, criteria for prioritizing, matching criteria, maximum grant amounts, and allocation of appropriated funds based upon project and applicant size.

(5) Notwithstanding any other provision of this section, and for the 2014-2015 fiscal year only, the Department of Environmental Protection shall award the sum of $3 million in grants equally to counties having populations of fewer than 100,000 for waste tire and litter prevention, recycling, education, and general solid waste programs. This subsection

CODING: Words underlined are additions.
mechanism for coordination among state agencies and the private sector in order to coordinate policy and overall strategic planning for developing new markets and expanding and enhancing existing markets for recyclable materials in this state, other states, and foreign countries. The duties of the center must include, at a minimum:

(h) Providing evaluation of solid waste management grants, pursuant to s. 403.7095, to reduce the flow of solid waste to disposal facilities and encourage the sustainable recovery of materials from Florida’s waste stream.

Section 5. This act shall take effect July 1, 2016.
THE FLORIDA SENATE
APPEARANCE RECORD

Meeting Date: 02/11/2016

Bill Number (if applicable): 922

Topic: Banking and Insurance

Name: Antonio Davis

Job Title: Veteran

Address: 2313 NW 6th Court
          KF Lauderdale, FL 33311

Phone: 

Email: 

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing: 

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

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

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

APPEARANCE RECORD

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

Meeting Date: 2/11/16

Bill Number (if applicable): SB 922

Amendment Barcode (if applicable):

Topic: SOLID WASTE MANAGEMENT

Name: KEYNA CORY

Job Title: LOBBYIST

Address: 110 E. COLLEGE AVE

Phone: 850-681-1065

Email: keynacory@paconsultants.com

City: TALLAHASSEE

State: FL

Zip: 32304

Speaking: ☑ For  ☐ Against  ☐ Information

Waive Speaking: ☑ In Support  ☐ Against

(The Chair will read this information into the record.)

Representing: NATIONAL WASTE & RECLYCLING ASSN. - FL CHAPTER

Appearing at request of Chair: ☐ Yes  ☑ No

Lobbyist registered with Legislature: ☑ Yes  ☐ No

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

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

APPEARANCE RECORD

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

Meeting Date: 2/11

Bill Number (if applicable): SB 922

Amendment Barcode (if applicable):

Topic: Solid Waste - SB 922

Name: Andrew Ketchel

Job Title: Director of Legislative Affairs - DEP

Address: 3900 Commonwealth Blvd

City: Tallahassee

State: FL

Zip: 32303

Phone:

Email:

Speaking: □ For □ Against □ Information

Waive Speaking: □ In Support □ Against

(The Chair will read this information into the record.)

Representing: DEP

Appearing at request of Chair: □ Yes □ No

Lobbyist registered with Legislature: □ Yes □ No

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

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

S-001 (10/14/14)
January 21, 2016

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

Dear Chairman Hays:

I respectfully request that SB 922 be scheduled for a hearing before the Senate Appropriations Subcommittee on General Government. Senate Bill 922 would codify provisions in the General Appropriations Act and Implementing Bill relating to the landfill closure and small county solid waste management programs, and provide direction for the expenditure of any funds appropriated to the programs.

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

William “Bill” Montford
State Senator, District 3

cc: Jamie DeLoach, Staff Director

BJM/marm
I. Summary:

CS/SB 966 requires life insurers to determine whether their life or endowment insurance policyholders, annuitants, and retained asset account holders have died by annually comparing them against the United States Social Security Administration Death Master File (DMF). The requirement applies to all life or endowment insurance policies, annuity contracts, and retained asset accounts that were in force on or after January 1, 1992. If a death is indicated, the bill requires the insurer to verify the death, verify if the deceased had other products with the company, determine if benefits are due, and attempt to locate and contact beneficiaries. If the policy or contract proceeds remain unclaimed five years after the date of death of the insured, annuitant, or account holder, the property escheats to the state as unclaimed property. Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the Department of Financial Services (DFS) Bureau of Unclaimed Property no later than May 1, 2021.

The bill applies to all life insurers requirements agreed to by many of the largest life insurers in settlement agreements with the DFS, the Office of the Attorney General, and the Office of Insurance Regulation (OIR), often as part of multi-state settlement agreements. The settlement agreements are related to examinations that often find insurers use information from the Social Security Administration’s Death Master File to stop paying a deceased person’s annuity, but do not use such information to search for beneficiaries of a life insurance policy. According to the OIR, these settlement agreements have resulted in the return of over $5 billion to beneficiaries.
directly by the companies nationwide and over $2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The bill is effective upon becoming law.

The bill is estimated to have a positive fiscal impact to the state. According to the Office of Insurance Regulation, remittances “far exceeding $100 million” are expected by May 1, 2021, as a result of this bill.

II. Present Situation:

Life Insurance

Life insurance is the insurance of human lives.\(^1\) Life insurance is generally purchased to ensure the financial security of the beneficiaries of the policy in the event the insured dies. The two most common types of life insurance are whole life insurance and term life insurance. A whole life insurance policy provides coverage for the life of the policyholder and pays a death benefit when the policyholder dies, regardless of his or her age, or on the maturity date.\(^2\) A term life insurance policy provides coverage for a specific time period and only pays a benefit if the policyholder dies during the term of the policy. There exist a wide array of life insurance policies that provide options to consumers to create flexible death benefits, flexible premium amounts, allow policyholders investment control of the cash value of the policy at variable rates of return, and more.

Endowment Insurance Policies

An endowment insurance policy provides for the payment of the face of the policy at the end a fixed term of years. As noted by the Department of Financial Services (DFS), a whole life policy is actually an endowment at a limiting age of 100.\(^3\) As with the whole life policy, endowment policies provide insurance protection against the economic loss of a premature death. Common endowment terms are five, ten, and twenty years, or to a stated age, such as 65. If the insured is living at the end of the endowment term, the insurance company will pay the face amount of the policy.

Annuities

An annuity is a form of life insurance contract between a consumer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer. In return, the insurer agrees to make periodic payments back to the annuitant at a future date, either for the annuitant’s life or a specified period. Annuities are often used for retirement planning because they provide a guaranteed source of income for future years. Annuities are available in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum payment

\(^1\) Section 624.602, F.S.
\(^2\) The maturity date for a life insurance policy often is when a policyholder turns 100 years old, but some policies have a later maturity date.
\(^3\) Florida Department of Financial Services Division of Consumer Services, Life Insurance Overview, [http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm](http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm) (click on link for types of policies)(last visited January 8, 2015).
payment in exchange for immediate and regular periodic payments, which may be for a lifetime. For a deferred annuity, premiums are usually either paid in a lump sum or through a series of payments, and the annuity is subject to an accumulation phase, when those payments experience tax-deferred growth, followed by the annuitization or payout phase, when the annuity provides a regular stream of periodic payments. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows tax-deferred. An annuity may or may not have a death benefit upon the death of the annuitant, based on the payment plan of the annuity. In a “life only” annuity, payments are only made until the death of the annuitant while in a fixed period annuity payments are made for a fixed number of years certain regardless of whether the annuitant dies during the years certain. Many life insurers regularly seek to verify whether an annuitant has died by searching the Social Security Administration Death Master File.

Retained Asset Accounts

A retained asset account is an account that may be used to settle a death claim.⁴ Generally, a beneficiary establishes a retained asset account to deposit the proceeds into an interest bearing account so that the beneficiary may consider investment options and other possible uses of the money. Generally, the beneficiary can choose to withdraw money from the account in a single “lump sum” payment or via installments, or may choose to only receive interest payments with any remaining money at the beneficiary’s death passing on to his or her beneficiaries.

Florida Disposition of Unclaimed Property Act

In 1987, the Florida Legislature adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (chapter 717, F.S., the Act).⁵ The Act defines unclaimed property as any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers’ checks, uncashed payroll or cashiers’ checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.⁶ The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the DFS Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder’s business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or

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⁶ ss. 717.104 – 717.116, F.S.
Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate the apparent owners within 180 days after an account becomes inactive.8 Once this search period expires, holders must file an annual report with the DFS for all property, valued at $50 or more, that is presumed unclaimed for the preceding year.9 The report must contain certain identifying information, such as the apparent owner’s name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.10

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.11 The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.12 The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department must deliver or pay to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.13

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.14 The DFS is allowed to retain up to $15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Fund.15

Like many other state unclaimed property programs, the Act is based on the common-law doctrine of escheat and is a “custody” statute, rather than a “title” statute, in that the DFS does not take title to abandoned property but instead obtains its custody and beneficial use pending identification of the property owner.16

**Unclaimed Property Owing Under Life Insurance Policies**

The Act provides that funds held or owing under a life or endowment insurance policy or an annuity contract that has matured or terminated are presumed unclaimed if unclaimed for more

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7 s. 717.102(1), F.S.
8 s. 717.117(4), F.S.
9 s. 717.117, F.S.
10 s. 717.119, F.S.
11 s. 717.1201, F.S.
12 ss.717.117 and 717.124, F.S.
13 s.717.124, F.S.
14 s. 717.123, F.S.
15 Id.
16 Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.
than five years\textsuperscript{17} after the funds became due and payable as established by records of the insurance company owing the funds.\textsuperscript{18}

Section 627.461, F.S., requires that every contract of insurance provide that, when a policy becomes a claim upon the death of the insured, settlement of the policy shall be made upon receipt of due proof of death and surrender of the policy. Accordingly, life insurance policies and annuities contracts with death benefits issued under Florida law have contractual terms that provide that the policy matures upon the insurer receiving actual proof of death, generally in the form of a certified copy of the death certificate.

**Regulatory Examination of Life Settlement Claim Practices**

According to the Office of Insurance Regulation, a 2009 Florida market conduct investigation revealed that some life insurance companies were using information from the Social Security Administration’s Death Master File to stop paying a deceased person’s annuity, but were not using such information to search for beneficiaries of a life insurance policy. Because insurers were not using information to find beneficiaries, the practice sometimes resulted in continued payment deductions from the accounts of deceased policyholders for the payment of premiums.\textsuperscript{19}

Often, claims are not made by the beneficiaries of life insurance policies because the beneficiary is unaware of the policy. Additionally, insurers generally did not remit the benefits under life insurance policies and annuities with a death benefit to the Bureau of Unclaimed Property unless the insured attained, or would have attained, the limiting age on an at-force policy, which for most policies is 100 years of age or greater.

In May 2011, insurance regulators from a number of states, including Florida, established a special task force to coordinate regulatory investigations of the claim settlement practices of life insurance companies. In particular, the task force focused on the allegations that many of the insurers were using the DMF to terminate payments under annuity contracts, but failed to use this information to facilitate claims payments on life insurance policies.\textsuperscript{20} Kevin McCarty, the Director of the Florida Office of Insurance Regulation, has served as the chair of the task force since its inception. Currently, 22 of the top 40 nationally significant groups writing policies have reached settlements or concluded an examination.\textsuperscript{21}

\textsuperscript{17} If the insured attains the limiting age under an in-force policy or would have done so if alive, the funds are deemed unclaimed if unclaimed for 2 years.
\textsuperscript{18} s. 717.107(1), F.S.
\textsuperscript{19} Florida Department of Financial Services Division of Consumer Services, Life Insurance Settlement Information, \url{http://www.myfloridacfo.com/Division/Consumers/FAQ/FAQ.htm} (click on hyperlink for John Hancock Life Insurance)(last visited January 8, 2016).
Life Insurance Claim Settlement Practices

Florida has entered into a number of settlement agreements with 20 life insurers from 2011 to the present, often as part of multi-state settlement agreements. Participants in the examination and settlement process have included Chief Financial Officer Jeff Atwater through the Bureau of Unclaimed Property at the Department of Financial Services, Attorney General Pam Bondi through the Office of the Attorney General, and the Office of Insurance Regulation (OIR). According to the OIR, these life claim settlement agreements have resulted in the return of over $5 billion to beneficiaries directly by the companies and over $2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The settlements generally require the life insurer to compare all the life insureds listed in company records against the DMF. For all policies the company obtains notice of the death of the insured through the DMF search or company records, it must conduct a thorough search for the beneficiaries. If a life insurance beneficiary contacts the insurer, the company must provide claims forms and instructions for the making of a claim. The insurers retain the right to require a death certificate as proof of death before paying proceeds to a beneficiary. If the company cannot locate the beneficiary, the insurer must remit the proceeds as unclaimed property within five years of the date of the death of the life insurance policyholder. The settlement agreements also establish business practices to facilitate payments to owners of assets under annuity contracts and retained asset accounts.

Social Security Administration Death Master File

The Social Security Administration (SSA) collects death information to administer its programs. The SSA receives death reports from many sources, including family members, funeral homes, financial institutions, postal authorities, States and other Federal agencies. The information is then compiled in the Death Master File (DMF). The DMF is actually a subset of the death information on the Numerical Identification System (Numident). Numident is the SSA electronic database that contains the records of Social Security Numbers assigned to individuals since 1936. The DMF includes the deceased individual’s social security number, first name, middle name, last name, date of birth, and date of death.

There are two versions of the DMF. The full file contains all death records extracted from the Numident database, including death data received from the States and is shared only with certain Federal and State agencies pursuant to section 205(r) of the Social Security Act. The limited access public file contains death records extracted from the Numident database, but does not include death data received from the States. The public file is available through the Department of Commerce’s National Technical Information Service, a clearinghouse for government information, which sells it to the public. Access to the DMF is restricted and requires users to

have a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty. Further, any party accessing the DMF must certify it has systems, facilities, and procedures to safeguard the information in the DMF and has experience in maintaining the confidentiality, security, and appropriate use of such information.

**Thrivent Financial for Lutherans v. State of Florida**

The 2014 decision of the Florida District Court of Appeal for the First District resolved a dispute between the DFS and Thrivent Financial for Lutherans (Thrivent) as to when funds under a life insurance or endowment insurance policy or annuity contract become due and payable, thus triggering the start of the dormancy period that results in the funds being remitted to the DFS as unclaimed property after the dormancy period ends.²⁵ Thrivent had appealed a DFS declaratory statement finding that life insurance funds are “due and payable” under s. 717.107(1), F.S., upon the death of the insured, at which time the dormancy period is automatically triggered. The DFS declaratory statement interpreting the statute also opined that s. 717.107, F.S., created an affirmative duty on insurer to search databases, such as the DMF, to determine if any of its insureds has died.

The Court found the DFS declaratory statement interpreting s. 717.107(1), F.S., invalid because it incorrectly interpreted the statute. The Court noted that under s. 717.107(1), F.S., life insurance funds “become due and payable as established by the records of the insurance company.” Because s. 627.461, F.S., requires each life insurance contract to provide that payment “shall be made upon receipt of due proof of death and surrender of the policy” the records of the insurer do not establish funds as due and payable under s. 717.107(1), F.S., until the insurer receives proof of death and surrender of the policy. The Court noted subsection (3) of the statute provides that contracts “not matured by actual proof of the death of the insured or the annuitant” according to company records are deemed matured and the proceeds are due and payable if the company knows the insured or annuitant has died or the insured has attained the limiting age. The Court reasoned that to interpret subsection (1) to make policy proceeds due and payable once the insured dies would render meaningless subsection (3). The Court also refused to impose an affirmative duty on insurers to search death records in order to determine whether any insured has died. The Court noted that the plain language of s. 717.107, F.S., does not impose such a duty and refused to rewrite the statute based on policy consideration, instead noting that policy concerns “must be addressed by the Legislature.”

**III. Effect of Proposed Changes:**

**Section 1** amends s. 717.107, F.S., of the Florida Disposition of Unclaimed Property Act to establish that funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than five years after the date of death of the insured, annuitant, or retained asset account holder. Under current law, such funds are presumed unclaimed if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding the funds. The decision in *Thrivent Insurance for Lutherans v. State of Florida, Department of Financial Services*, (Thrivent decision) established that under current law, funds

are not due and payable as established from the records of the insurance company until the company receives a certified copy of a death certificate as required by the contract terms of the policy and s. 627.461, F.S.

The bill requires insurers to at least annually perform a comparison of its insureds against the United States Social Security Administration Death Master File (DMF). The comparison must be performed for all the insurer’s policyholders under life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The Thrivent decision found that currently the DFS lacks the authority to require such a search under s. 717.107, F.S. The annual comparison must be made before August 31 of each year. Additionally, if the insurer makes a comparison of its annuity policyholders against the DMF more frequently than once a year, the insurer must perform the DMF comparison required by this bill as frequently. An insurer may perform the comparison using any database or service that the DFS determines is at least as comprehensive as the DMF for the purpose of indicating a person has died.

The bill establishes that an insured, annuitant, or retained asset account holder is presumed deceased if that person’s date of death is indicated on the DMF, unless the insurer has in its records competent, substantial evidence that the person is living. The insurer is required to account for common variations in data and for partial names, social security numbers, dates of birth, and addresses which would otherwise preclude an exact match.

The following are exempted from the bill’s requirements:

- An annuity issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) or that is issued to fund an employment-based retirement plan, including any deferred compensation plan.
- A policy of credit life or accidental death insurance.
- A joint and survivor annuity contract, if an annuitant is still living.
- A policy issued to a group master policy owner for which the insurer does not perform recordkeeping functions that provide the insurer with access to, for each individual insured, the social security number or name and date of birth, beneficiary designation information, coverage eligibility, the benefit amount, and premium payment status.

The bill requires an insurer, no later than 120 days after learning of a death through a DMF match, to complete and document an effort to confirm the death of the insured, annuitant, or retained asset account holder. The insurer must review its records to determine if that person purchased other products from the insurer. The insurer must also determine whether benefits are due. Finally, the insurer must complete and document an effort to locate and contact the beneficiary or authorized representative unless such person communicates with the insurer before the expiration of the 120-day period. The effort to locate the beneficiary or authorized representative must include sending that person information concerning the insurer’s claim process, including notice of any requirement in a policy, annuity, or retained asset account to provide a certified original or copy of the death certificate.

Insurers and their agents or third parties may not charge insureds, annuity owners, retained asset account holders, and beneficiaries fees or costs associated with any search, verification, claim or delivery of funds pursuant to the requirements of s. 717.107, F.S.
Section 2 of the bill states that the bill is remedial and applies retroactively. The retroactive application of the bill evidences legislative intent to apply the bill to policies, contracts and accounts entered into, prior to the effective date of the bill.

Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the DFS no later than May 1, 2021. The prohibition against fines, penalties and additional interest is designed to provide insurers five years to comply with the requirements of the bill before being subject to such sanctions.

Section 3 provides that the act is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions of CS/SB 966 are applied to life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The bill expresses clear intent to apply retroactively, thus constitutional concerns are raised if the statute impairs vested rights, creates new obligations, or imposes new penalties. A vested right is more than a mere expectation based on an anticipation of the continuance of an existing law. It must be an immediate, fixed right of present or future enjoyment. If, however, the statute is remedial in nature and expresses clear intent to apply retroactively, it does not raise constitutional concerns. Remedial statutes are those that do not create new or take away vested rights.

Representatives of some life insurers argue that the application of the bill’s requirements to life insurance policies with contractual terms that require proof of death in accordance with s. 627.461, F.S., could raise constitutional issues related to the impairment of contracts. Representatives from the Department of Financial Services counter such

26 R.A.M. of South Florida, Inc., v. WCI Communities, Inc., 869 So.2d 1210, 1216 (Fla. 2nd DCA 2004).
28 City of Lakeland v. Catinella, 129 So.2d 133 (Fla. 1961).
concerns, pointing to the United States Supreme Court decision in *Connecticut Mutual Life Insurance Co. v. Moore*\(^29\) (*Moore*).

In *Moore*, the Court addressed the validity of the New York unclaimed property statute as applied to life insurance policies, including “policies payable on death in which the insured has died and no claim by the person entitled thereto has been made for seven years.”\(^30\) The Court addressed whether the unclaimed property statute impaired the obligation of contract within the meaning of Art. I, S. 10 of the United States Constitution.\(^31\) The insurers argued that the terms of the insurance policies provided the insurer has no obligation until proof of death is submitted and the policy is surrendered. The unclaimed property statute, the insurers further argued, transforms a conditional obligation under the life insurance policy into a liquidated obligation.\(^32\)

The Supreme Court held that the New York statute did not violate the constitution because of its enforced variations from the insurance policy provisions.\(^33\) The Court reasoned that the state has the same power to seize abandoned life insurance moneys as abandoned bank deposits, despite the differences between the two. The Court concluded by saying it saw no constitutional reason why a state may not proceed administratively to take over the care of unclaimed property, noting that the right of appropriation by the state of abandoned property has existed for centuries in the common law.\(^34\)

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Many beneficiaries of life or endowment insurance policies and annuities contracts who are unaware of such policies will benefit by claiming benefits after being contacted by a life insurer. If the life insurer remits the funds held or owing under the policy or contract to the DFS, Bureau of Unclaimed Property, beneficiaries will benefit by having a central location with which to search for possible life insurance proceeds.

Life insurers will incur indeterminate costs related to identifying policies and contracts subject to the provisions of the bill, conducting searches of the DMF to identify deceased policyholders, and attempting to locate beneficiaries.

\(^29\) 333 U.S. 541 (1948).
\(^30\) *Moore*, 333 U.S. 541 at 543.
\(^31\) *Moore*, 333 U.S. 541 at 545.
\(^32\) *Moore*, 333 U.S. 541 at 546.
\(^33\) *Moore*, 333 U.S. 541 at 546.
\(^34\) *Moore*, 333 U.S. 541 at 547.
C. Government Sector Impact:

The Department of Financial Services indicates that the Bureau of Unclaimed Property expects to receive reports and remittances “far exceeding $100 million” as insurers are unable to pay beneficiaries after searching the DMF and performing due diligence searches for beneficiaries. The DFS did not project remittance amounts to the state for the coming fiscal years because the bill specifies that insurers will not be subject to fines, penalties or additional interest related to the remittance of unclaimed proceeds on policies and contracts where the insured had died prior to the dormancy trigger time period (generally five years) expiring.

The department further indicates a potential for unknown litigation expenses if insurance companies challenge the law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 717.107 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.)

CS by Banking and Insurance on January 19, 2016:
The CS requires insurers, within 120 days after learning of the death of an insured, annuitant, or retained asset account holder, to complete an effort to confirm the death, review its records to determine if the person has other products from the insurer, determine, whether benefits are due, and complete an effort to locate and contract a beneficiary that has not contacted the insurer. The effort must include providing information regarding the claim process and the requirements for submitting a claim.

The CS also:
- Exempts from the bill credit life policies and joint and survivor annuities where an annuitant is still living.
- Allows insurers to disclose minimal personal information about an insured, annuitant, or account holder to outside parties in an effort to locate a beneficiary, to the extent allowed by law.
- Allows the insurer to use an alternate database or service that DFS determines is at least as comprehensive as the Death Master File for purposes of indicating a person has died.
• Clarifies that an insurer may use competent, substantial evidence to show that a person presumed dead by the Death Master File is actually alive.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
A bill to be entitled An act relating to unclaimed property; amending s. 717.107, F.S.; revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; revising a condition of when certain insurance policies or annuity contracts are deemed matured and the proceeds are due and payable; requiring an insurer to compare records of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File or a certain database or service to determine if a death is indicated; providing requirements for the comparison; providing for a presumption of death for certain individuals; providing an exception; requiring an insurer to account for certain variations in data and partial information; providing the circumstances under which a policy, a contract, or an account is deemed to be in force; providing applicability; defining a term; requiring an insurer to follow certain procedures after learning of a death through a specified comparison; authorizing an insurer to disclose certain personal information to specified persons for certain purposes; prohibiting an insurer and specified entities from charging fees and costs associated with certain activities; conforming provisions to changes made by the act; providing retroactive applicability; providing an effective date.

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

Section 1. Section 717.107, Florida Statutes, is amended to read:
717.107 Funds owing under life insurance policies, annuity contracts, and retained asset accounts; fines, penalties, and interest; United States Social Security Administration Death Master File.—
(1) Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder. Funds become due and payable as established from the records of the insurance company holding or owing the funds, but property described in paragraph (3)(d) is presumed unclaimed if such property is not claimed for more than 2 years. The amount presumed unclaimed shall include any amount due and payable under s. 627.4615.

(2) If a person other than the insured, annuitant, or retained asset account holder is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the annuitant, or the retained asset account holder according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof...
of the death of the insured, the annuitant, or the retained asset account holder according to the records of the company is deemed matured and the proceeds due and payable if any of the following applies:
(a) The company knows that the insured, the annuitant, or the retained asset account holder has died.
(b) A presumption of death made in accordance with paragraph (8)(b) has not been rebutted.
(c) The policy or contract has reached its maturity date.
(d) The insured has attained, or would have attained if he or she were living, the limiting age under the mortality table on which the reserve is based;
2. The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph 1.; and
3. Neither the insured nor any other person appearing to have an interest in the policy within the preceding 2 years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy; corresponded in writing with the company concerning the policy; or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.
(4) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent the policy from being matured or terminated under subsection (1) if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.
(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder’s correct address to which the notice must be mailed.
(6) Notwithstanding any other provision of law, if the company learns of the death of the insured, the annuitant, or the retained asset account holder and the beneficiary has not communicated with the insurer within 4 months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.
(7) Commencing 2 years after July 1, 1987, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:
(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class.
(b) The address of each beneficiary.
(c) The relationship of each beneficiary to the insured.
(8)(a) Notwithstanding any other provision of law, an insurer shall compare the records of its insureds’ life or
endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992, against the United States Social Security Administration Death Master File to determine if the death of an insured, an annuitant, or a retained asset account holder is indicated. The comparison must use the name and social security number or date of birth of the insured, annuitant, or retained asset account holder. The comparison must be made on at least an annual basis before August 31 of each year. If an insurer performs such a comparison regarding its annuities or other books of business more frequently than once a year, the insurer must also make a comparison regarding its life insurance policies, annuity contracts that provide a death benefit, and retained asset accounts at the same frequency as is made regarding its annuities or other books or lines of business. An insurer may perform the comparison required by this paragraph using any database or service that the department determines is at least as comprehensive as the United States Social Security Administration Death Master File for the purpose of indicating that a person has died.

(b) An insured, an annuitant, or a retained asset account holder is presumed deceased if the date of his or her death is indicated by the comparison required under paragraph (a), unless the insurer has in its records competent and substantial evidence that the person is living, including, but not limited to, a contact made by the insurer with such person or his or her legal representative. The insurer shall account for common variations in data and for any partial names, social security numbers, dates of birth, and addresses of the insured, the annuitant, or the retained asset account holder which would otherwise preclude an exact match.

(c) For purposes of this section, a policy, an annuity contract, or a retained asset account is deemed to be in force if it has not lapsed, has not been cancelled, or has not been terminated at the time of death of the insured, the annuitant, or the retained asset account holder.

(d) This subsection does not apply to an insurer with respect to benefits payable under:

1. An annuity that is issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 or that is issued to fund an employment-based retirement plan, including any deferred compensation plan.

2. A policy of credit life or accidental death insurance.

3. A joint and survivor annuity contract, if an annuitant is still living.

4. A policy issued to a group master policy owner for which the insurer does not perform recordkeeping functions. As used in this subparagraph, the term “recordkeeping” means those circumstances under which the insurer has agreed through a group policyholder to be responsible for obtaining, maintaining, and administering, in its own or its agents’ systems, information about each individual insured under a group insurance policy or a line of coverage thereunder, including at least the following:

a. The social security number, or name and date of birth;

b. Beneficiary designation information;

c. Coverage eligibility;

d. The benefit amount; and

e. Premium payment status.
(9) No later than 120 days after learning of the death of an insured, an annuitant, or a retained asset account holder through a comparison under subsection (8), an insurer shall:

(a) Complete and document an effort to confirm the death of the insured, annuitant, or retained asset account holder against other available records and information.

(b) Review its records to determine whether the insured, annuitant, or retained asset account holder purchased other products from the insurer.

(c) Determine whether benefits may be due under a policy, an annuity, or a retained asset account.

(d) Complete and document an effort to locate and contact the beneficiary or authorized representative under a policy, an annuity, or a retained asset account, if such person has not communicated with the insurer before the expiration of the 120-day period. The effort must include:

1. Sending to the beneficiary or authorized representative information concerning the claim process of the insurer.

2. Notice of any requirement to provide a certified original or copy of the death certificate, if applicable under the policy, annuity, or retained asset account.

(10) An insurer may, to the extent permitted by law, disclose the minimum necessary personal information about an insured, an annuitant, a retained asset account owner, or a beneficiary to an individual or entity reasonably believed by the insurer to possess the ability to assist the insurer in locating the beneficiary or another individual or entity that is entitled to payment of the claim proceeds.

(ii) An insurer, or any agent or third party that it engages or that works on its behalf, may not charge insureds, annuitants, retained asset account holders, beneficiaries, or the estates of insureds, annuitants, retained asset account holders, or the beneficiaries of an estate any fees or costs associated with any search, verification, claim, or delivery of funds conducted pursuant to this section.

Section 2. The amendments made by this act are remedial in nature and apply retroactively. Fines, penalties, or additional interest may not be imposed due to the failure to report and remit an unclaimed life or an endowment insurance policy, a retained asset account, or an annuity contract with a death benefit if any unclaimed life or endowment insurance policy, retained asset account, or annuity contract proceeds are reported and remitted to the Department of Financial Services on or before May 1, 2021.

Section 3. This act shall take effect upon becoming a law.
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 2/11/2016

SB 966

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 966

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 400 N Monroe Street

Phone 850-413-2863

Street Tallahassee

Email elizabeth.boyd@myfloridacfo.com

City FL

State Zip 32303

Speaking: ☑️ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair: ☐ Yes ☑️ No

Lobbyist registered with Legislature: ☑️ Yes ☐ No

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

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

APPEARANCE RECORD

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

Meeting Date: 21/11/16

Bill Number (if applicable): 966

Amendment Barcode (if applicable):

Topic: Unclaimed Properties

Name: Caitlin Murray

Job Title: Director of Government Affairs

Address: ____________________________ Street

City: __________________ State: _______ Zip: ________

Phone: ____________________________ Email: ____________________________

Speaking: [x] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing: Office of Insurance Regulation

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

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

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

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

APPEARANCE RECORD

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

Meeting Date 2/11/16

Bill Number (if applicable) 9860

Amendment Barcode (if applicable)

Topic UNCLAIMED PROPERTY

Name KYLE ULRICH

Job Title SVP

Address 3159 SILAMICK S

Street

TALLAHASSEE, FL 32309

City State Zip

Phone 850-566-4204

Email KULRICH@FAIA.COM

Speaking: [  ] For [  ] Against [  ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing FL. ASSOC. OF INSURANCE AGENTS

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/14/14)
January 20, 2015

The Honorable Alan Hays
Senate Appropriations Subcommittee on General Government, Chair
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 966- Unclaimed Property

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 966, Relating to Unclaimed Property, for a public hearing at your earliest convenience.

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

Sincerely,

Lizbeth Benacquisto
Senate District 30

Cc: Jamie DeLoach
I. Summary:

PCS/CS/SB 992 makes various changes to statutes relating to the Department of Financial Services (DFS or the department).

Current law requires plaintiffs to serve lawsuits on insurance companies by serving documents initiating the lawsuit at the department. These documents are sent to the DFS by mail or by process server. The bill allows the DFS to create a system for electronic service of process and create an internet-based system for distributing documents to insurance companies.

The Chief Financial Officer (CFO) is designated the State Fire Marshal. The CFO administers the state fire code and the certification of firefighters. This bill provides for expiration of firefighter certifications after four years and provides a renewal process. It provides additional grounds that the State Fire Marshal can suspend, revoke, or deny an application for certification. The bill creates a procedure for an applicant for firefighter certification with a criminal record or dishonorable discharge from the United States Armed Forces to obtain a certificate if they can demonstrate by clear and convincing evidence that they do not pose a risk to persons or property.

The bill creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments. The program will provide financial assistance to improve firefighter safety and
enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The bill provides that employees of the state university system, a special district, or a water management district can participate in the deferred compensation program for state employees administered by the department.

This bill amends the Florida Single Audit Act to raise the audit threshold from $500,000 to $750,000 to conform to the federal single audit act. It reorganizes the statute to place the provisions relating to higher education entities in one section.

The bill provides that a licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

The bill authorizes the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association’s regular membership but does not provide for nominations.

The department administers the sinkhole neutral evaluation program for the resolution of disputed sinkhole insurance claims. This bill amends the qualifications of the neutral evaluator to provide that one cannot serve as a neutral evaluator on a claim if the individual was employed, within the previous five years, by the firm that did the initial sinkhole testing.

The bill allows the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code. This will allow, for example, the DFS’ Division of Agent and Agency Services access to photographs to aid in the investigation of insurance agents.

The bill amends the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.

The bill provides cost savings to the state, estimated to be $54,500, due to the changes in the service of process. The bill appropriates the recurring sum of $500,000 and one position to support the Volunteer Firefighter Assistance Grant Program from the Insurance Regulatory Trust Fund.

II. Present Situation:

Service of Process on the Chief Financial Officer

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Section 48.151, F.S., provides that the Chief Financial Officer (“CFO”) is the agent for service of process for:

- All insurers applying for authority to transact insurance;
- All licensed nonresident insurance agents;
• All nonresident disability insurance agents;
• Any unauthorized insurer under s. 626.906 or s. 626.937, F.S.;
• All domestic reciprocal insurers;
• All fraternal benefit societies;
• All warranty associations;
• All prepaid limited health service organizations; under chapter 636; and
• All persons required to file statements under s. 628.461, F.S.¹

All persons or entities for which the CFO is the agent for service of process must designate an individual to receive documents served on DFS. In order to serve process on an insurance company or other entity for which the CFO is the agent, a plaintiff must mail the summons and other documents to the DFS or serve the documents at the DFS by personal service at the DFS Tallahassee office. The plaintiff must pay a $15 fee to the DFS for service.² The CFO cannot accept service via electronic mail.³

Once the DFS receives the documents, it forwards them to the insurer or entity.⁴ The CFO can use registered or certified mail to send the documents to authorized insurers.⁵ The CFO can use registered mail to send the documents to unauthorized insurers.⁶ Section 624.307, F.S., also allows the CFO to use certified mail, registered mail, or other verifiable means to serve regulated entities.

According to representatives of the DFS, many law firms are creating and filing documents in court electronically but must print and send paper copies to the DFS. The DFS believes it could improve efficiency if plaintiffs were allowed to serve DFS electronically.⁷

**Alternative Retirement Benefits for OPS Employees**

Section 110.1315, F.S., requires that upon review and approval by the Executive Office of the Governor, the DFS must provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The DFS is allowed to contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code.⁸ By creating the program for such employees, the state does not have to contribute to Social Security as an employer.⁹ The DFS reports that the program saved the state $11 million in 2013 and 2014.¹⁰

¹ See s. 48.151(3), F.S.
² See s. 624.502, F.S.
⁴ See ss. 624.307, 624.423, and 626.907, F.S.
⁵ See s. 624.423, F.S.
⁶ See s. 626.907, F.S.
⁷ Interview with DFS staff, January 13, 2016.
⁸ See s. 110.1315(1), F.S.
¹⁰ Id.
Florida Deferred Compensation Program

Section 112.215, Florida Statutes, requires the CFO to create a deferred compensation plan for state employees. The plan allows state employees to defer a portion of their income and place it in an investment account. The employee does not pay taxes on the deferred amount or any investment gains until the employee withdraws the money.\(^{11}\)

Approval of Bonds

Section 137.09, F.S., provides that each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. These bonds must be approved by the board of county commissioners and by the DFS. Section 374.983, F.S., requires each commissioner of the Board of Commissioners of the Florida Inland Navigation District to post a surety bond in the sum of $10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of the office. This bond must be approved by the CFO. The DFS has not been required to approve bonds under either of these statutes in quite some time and believes the requirements are not needed.\(^{12}\)

Florida Single Audit Act

Section 215.97, F.S., creates the Florida Single Audit Act. The DFS has explained the history and purpose:

In 1998, the Florida Single Audit Act was enacted to establish state audit and accountability requirements for state financial assistance provided to nonstate entities. The Legislature found that while federal financial assistance passing through the state to nonstate entities was subject to mandatory federal audit requirements, significant amounts of state financial assistance was being provided to nonstate entities that was not subject to audit requirements that paralleled federal audit requirements. Accordingly, it was the intent of the Act that state audit and accountability requirements, to the extent possible, parallel the federal audit requirements.\(^{13}\)

Each nonstate entity that expends more than $500,000 in state financial assistance\(^{14}\) in a fiscal year is required to have an audit for that fiscal year. Nonstate entities include local governments, nonprofit organizations, and for-profit organizations.\(^{15}\)

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\(^{11}\) See https://www.myfloridadeferredcomp.com/SOFWeb/default.aspx (last visited January 14, 2016).

\(^{12}\) See Department of Financial Services, Senate Bill 992 Bill Analysis (January 12, 2016).

\(^{13}\) See https://apps.fldfs.com/fsaa/singleauditact.aspx (last visited January 14, 2016).

\(^{14}\) State financial assistance is state resources provided to a nonstate entity to carry out a state project.

\(^{15}\) See s. 215.97(2)(m), F.S.
Section 215.97(8)(o), F.S., provides that contracts involving the State University System or the Florida College System funded by state financial assistance may be in the form of the following:

- A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or
- A combination of the above contract forms.

The DFS reports that because references to higher education entities are spread throughout the Florida Single Audit Act, there is confusion over which provisions apply in various situations.\(^{16}\)

### Driver Licenses Photographs

The Department of Highway Safety and Motor Vehicles maintains digital photographs of licenses pursuant to s. 322.142, F.S. Those photographs are exempt from public disclosure but may be shared with various state agencies to assist the agencies’ with their duties. The DFS can obtain such photographs to facilitate the validation of unclaimed property claims and the identification of false or fraudulent claims.\(^{17}\)

### Boiler Regulation

Chapter 554, F.S., is the Florida Boiler Safety Act. The DFS administers the boiler safety code. Section 509.211, F.S., provides that every enclosed room or space that contains a boiler and that is located in a public lodging establishment must be equipped with a carbon monoxide sensor that bears the label of a nationally tested laboratory and complies with the most recent Underwriters Laboratories Standard 2034.\(^{18}\) The statute provides that the carbon monoxide detector is not necessary if the DFS Division of State Fire Marshal determines the carbon monoxide hazard has been mitigated.\(^{19}\)

### Public Adjusters

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies. The Department of Financial Services (DFS) regulates all types of adjusters.

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\(^{16}\) See Department of Financial Services, Senate Bill 992 Bill Analysis (January 12, 2016).

\(^{17}\) See s. 322.142(4), F.S.


\(^{19}\) See s. 509.211(4), F.S.
Appointments to the Board of the Florida Surplus Lines Service Office

Section 626.921, F.S., creates the Florida Surplus Lines Service Office (FSLSO). The FSLSO is a self-regulating, nonprofit association for Florida surplus lines agents. The FSLSO’s responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.

The FSLSO is operated under the supervision of a board of governors consisting of:

- Five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association.
- Two individuals appointed by the DFS, one from each of the two largest domestic agents’ associations, each of whom must be licensed surplus lines agents.
- The Insurance Consumer Advocate.
- One individual appointed by the department, who must be a risk manager for a large domestic commercial enterprise.

The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors and claim adjustment companies. The purpose of the association is to encourage an exchange of information among members and to disseminate educational information for the benefit of members and the betterment of the excess and surplus lines industry.

Anti-Fraud Reward Program

Section 626.9892, F.S., creates the Anti-Fraud Reward Program within the DFS funded from the Insurance Regulatory Trust Fund. The program allows the DFS to provide rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons convicted of crimes investigated by the Division of Insurance Fraud. The program was established in 1999 and has paid over $365,000 in rewards.

Neutral Evaluators

Sections 627.707-627.7074, F.S., create requirements for the investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder’s premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional geologist to conduct testing to determine the cause of the loss if sinkhole loss is covered under the policy. If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.

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20 See s. 626.921(1), F.S.
21 See s. 626.921(4), F.S.
22 See s. http://www.myflsla.com/about/
24 s. 627.7072, F.S., contains testing standards in sinkhole claims.
25 s. 627.707(2), F.S.
26 s. 627.707(4)(a), F.S.
Neutral evaluation is available to either party if a sinkhole report has been issued. Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs. Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured. A request for neutral evaluation is filed with the DFS. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request. The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization. The report is admissible in subsequent court proceedings. Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

Section 627.7074(7), F.S., provides reasons for which a neutral evaluator may be disqualified:
- A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.
- The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.
- The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person’s interests are materially adverse to the interests of the parties. The term “substantially related matter” means participation by the neutral evaluator on the same claim, property, or adjacent property.
- The proposed neutral evaluator has, within the preceding five years, worked as an employer or employee of any party to the case.

### Provisions Related to the State Fire Marshal

Florida’s fire prevention and control law, ch. 633, F.S., designates the CFO as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the DFS, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

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27 s. 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.
28 s. 627.7074(2), F.S.
29 s. 627.7074(3), F.S.
30 s. 627.7074(4), F.S.
31 s. 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.
32 ss. 627.7074(5), (12), F.S.
33 s. 627.7074(13), F.S.
34 s. 633.104, F.S.
In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

III. Effect of Proposed Changes:

Service of Process on the Chief Financial Officer (Sections 1, 9, 10, 11, and 13)

This bill provides an alternative means for plaintiffs to serve process on insurers and other regulated persons. The bill allows the DFS to create an internet-based transmission system to accept service of process by electronic transmission of documents. This will allow plaintiffs to serve documents electronically and allow DFS to remove the requirement that paper documents be served.

Once served, the CFO can mail the documents, send them by some other verifiable means, or make them available by electronic transmission to a secure website established by the DFS. Once documents are made available electronically, the CFO must send notice of receipt to the person designated to receive legal process. The notice must state the date and manner in which the copy of process was made available and contain the uniform resource locator for a hyperlink to access files and information on the Department’s website to obtain a copy of the process.

Alternative Retirement Benefits for OPS Employees

Section 2 amends s. 110.1315, F.S., to remove the review and approval duties from the Executive Office of the Governor relating to the alternative retirement income security program for temporary and seasonal employees of the state.

Florida Deferred Compensation Program

Section 3 amends s. 112.215, F.S., to provide that persons employed by a state university, special district, or a water management district are eligible to participate in the deferred compensation program established by the CFO. According the DFS, these employees currently participate in the program but the DFS states that clarification is needed.

Approval of Bonds (Sections 4 and 7)

Sections 4 and 7 amend ss. 137.09 and 374.983, F.S., to remove the requirement that the DFS approve bonds for county commissioners and commissioners of the Florida Inland Navigation District. The bonds will still be reviewed by the county boards and by the Florida Inland Navigation District.

36 See Department of Financial Services, An Act Relating to the Department of Financial Services White Paper (on file with the Committee on Banking and Insurance).
Florida Single Audit Act (Section 5)

The bill amends the Florida Single Audit Act to raise the audit threshold from $500,000 to $750,000. According to the DFS, the federal single audit threshold was recently raised from $500,000 to $750,000. The bill matches the Florida threshold to the federal threshold. Many entities that receive state financial assistance also receive federal financial assistance. This change prevents an entity from having to comply with different audit thresholds.\(^{37}\)

The bill creates a new subsection to the Florida Single Audit Act to consolidate the provisions of the Act relating to higher education entities.\(^{38}\) The bill provides that any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance must comply with s. 215.971(1), F.S., (providing that the contract must include provisions relating to scope of work, deliverables, consequences for nonperformance, and return of unused funds) and s. 216.3475, F.S., (limiting payments to the prevailing rate for services). The contract must be in the form or a combination of the following:

- A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

The bill provides that if a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the contracting requirements of the bill.

The bill does not exempt the higher education entity from compliance with maintaining records concerning state financial assistance and does not exempt the entity from laws that allow access and examination of those records by the state awarding agency, the higher education entity, the DFS, or the Auditor General.

Driver Licenses Photographs (Section 6)

This bill amends s. 322.142, F.S., to allow the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code by licensees and by unlicensed persons. For example, this will allow the DFS’ Division of Agent and Agency Services to access photographs to aid in the investigation of insurance agents.\(^{39}\)

Boiler Regulation (Section 8)

This bill amends s. 509.211, F.S., to remove the reference to a “nationally recognized testing laboratory.” It requires the carbon monoxide detector to be listed complying with ANSI/UL

\(^{37}\) See Department of Financial Services, Senate Bill 992 Bill Analysis (January 12, 2016).

\(^{38}\) The bill defines “higher education entity” as a Florida College System institution or a state university.

\(^{39}\) See Department of Financial Services, Senate Bill 992 Bill Analysis (January 12, 2016).
2075, Standard for Gas and Vapor Detectors and Sensors by a nationally recognized testing laboratory accredited by the Occupational Safety and Health Administration. The bill requires that the detectors either be integrated to the establishment’s fire detection system or connected to the boiler safety circuit such that the boiler does not operate when carbon monoxide is detected.

The bill removes the ability of the Division of State Fire Marshal to determine that some other method has adequately mitigated the risk. It requires the carbon monoxide detectors to meet the statutory requirements.

**Public Adjusters (Section 12)**

The bill provides that a licensed health insurance agent is not defined as a public adjuster in certain situations. A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

**Appointments to the Board of the FSLSO (Section 14)**

The bill requires that the five members of the Florida Surplus Lines Association regular membership appointed to the FSLSO board of governors must be individuals nominated by the Florida Surplus Lines Association.

**Anti-Fraud Reward Program (Section 15)**

The bill allows the DFS to give rewards under the Anti-Fraud Reward Program to persons who provide information leading to the arrest and conviction of persons who violate statutes currently investigated by the State Fire Marshal. Crimes include making false reports regarding explosives or arson (s. 790.164, F.S.), planting a “hoax” bomb (s. 790.165, F.S.), crimes related to weapons of mass destruction (s. 790.166, F.S.), arson resulting in injury to a firefighter (s. 806.031, F.S.), preventing extinguishment of a fire (s. 806.10, F.S.), crimes relating to fire bombs (s. 806.111), and burning to defraud an insurer (s. 817.233, F.S.).

**Neutral Evaluators (Section 16)**

The bill provides that a proposed neutral evaluator is disqualified if he or she has, within the preceding five years, worked for the entity that performed the initial sinkhole testing required by s. 627.7072, F.S.

**Provisions Related to the State Fire Marshal (Sections 17-24, 26)**

**Criminal Records of Applicants for Certification**

Section 633.412, F.S., provides that a person applying for certification as a firefighter must not have been convicted of a felony, a misdemeanor relating to the certification, a misdemeanor relating to perjury or false statements, or have been dishonorably discharged from the Armed Forces of the United States. Section 15 of the bill creates s. 633.107, F.S., to give the DFS the discretion to grant certificates to some applicants with criminal records if certain conditions are met. The applicant must have paid in full any fee, fine, fund, lien, civil judgment, restitution, cost
of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense. In addition, at least five years must have elapsed since the applicant completed or was released from confinement, supervision, or nonmonetary conditions imposed by the court for a disqualifying offense or at least five years must have elapsed since the applicant was dishonorably discharged from the United States Armed Forces. Once those conditions are met, the applicant must demonstrate by clear and convincing evidence that he or she would not pose a risk to persons or property if licensed or certified. Evidence must include:

- Facts and circumstances surrounding the disqualifying offense;
- The time that has elapsed since the offense;
- The nature of the offense and harm caused to the victim;
- The applicant’s history before and after the offense; and
- Any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be licensed or certified.

The bill gives the DFS the discretion whether to grant or deny an exemption. The department must provide its decision to deny the exemption in writing and must state with particularity the reasons for denial. The department’s decision is subject to proceedings under chapter 120, F.S., except that a formal proceeding under s. 120.57(1), F.S., is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.\(^\text{40}\)

**Life Safety Code**

Section 19 of this bill provides that the provisions of the Life Safety Code, part of the Florida Fire Prevention Code, do not apply to “newly constructed” one and two-family dwellings. One and two-family dwellings are exempt from the Florida Fire Prevention Code and representatives of the DFS are concerned that the statute could lead to confusion.\(^\text{41}\)

**Firefighter and Volunteer Firefighter Training and Certification**

Currently, to work as a firefighter, an individual must hold a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal (“Division”).\(^\text{42}\) To obtain a firefighter certificate of compliance, an individual must:

- Satisfactorily complete the Minimum Standards Course\(^\text{43}\) or have satisfactorily completed training for firefighters in another state which has been determined by the division to be the equivalent of the training required for the Minimum Standards Course.
- Passes the Minimum Standards Course examination.
- Possesses the qualifications in s. 633.412, F.S.:\(^\text{44}\)
  - Be a high school graduate
  - Be at least 18 years old
  - Have no felony convictions

\(^{40}\) The procedure set forth in this bill is similar to the procedure in s. 435.07, F.S., and discussed in *J.D. v. Florida Department of Children and Families*, 114 So.3d 1127 (Fla. 1st DCA 2013).

\(^{41}\) See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

\(^{42}\) See s. 633.416, F.S.

\(^{43}\) This course provides the basic fundamental knowledge and skills to function in a fire fighting environment and consists of at least 398 hours. See [http://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm](http://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm) (last visited January 14, 2016).

\(^{44}\) See s. 633.408(4), F.S.
Have no misdemeanor convictions relating to the certification or for perjury or false statements

Be of good moral character

Be in good physical condition as determined by a division approved physical examination

Be a nonuser of tobacco or tobacco products for at least year prior to the application

A volunteer firefighter certificate of completion is used for individuals who satisfactorily complete a course established by the division.

Section 21 of the bill requires that an individual seeking a firefighter certificate of compliance must pass the minimum standards course examination within 12 months after completing the required courses. Section 21 also provides that a firefighter certificate of compliance or a volunteer firefighter certificate of completion expires four years after the date of issuance unless renewed.

Section 22 of the bill repeals the requirement of the DFS to suspend or revoke all other certificates an individual holds, if it suspends an individual’s certificate.

Retention and Renewal of Certificates

Under current law, s. 633.414, F.S., provides requirements to retain a firefighter certificate of compliance and a volunteer firefighter certificate of completion. In order for a firefighter to retain a certificate of compliance, the firefighter must, every four years:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the division;
- Successfully complete a refresher course consisting of a minimum of 40 hours of training; or
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.

Currently, in order for a volunteer firefighter to retain a volunteer firefighter certificate of completion, the volunteer firefighter must, every four years, be active as a volunteer firefighter or successfully complete a 40 hour refresher course.45

Section 23 of the bill requires that the firefighter complete a “Firefighter Retention Refresher Course within six months before the four-year period expires. It further provides that a firefighter or volunteer firefighter certificate expires if the individual does not meet retention requirements. Section 23 provides that the State Fire Marshal may suspend, revoke, or deny a certificate if a reason for denial existed but was not known at the time of issuance, for violations of ch. 633, F.S., or rules or orders of the State Fire Marshal, or falsification of records.

Section 24 of the bill provides that, effective July 1, 2013, an individual who holds a certificate is subject to revocation for:

- A conviction of a misdemeanor relating to the certification or to perjury or false statements;
- A conviction of a felony; or

45 See s. 633.414, F.S.
• A dishonorable discharge from the Armed Forces of the United States.

*Firefighter Assistance Grant Program (Section 18)*

Section 18 of this bill creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.

The program provides financial assistance to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities. The bill requires the division to administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. The division is required to prioritize the annual award of grants to such fire departments and volunteer fire departments demonstrating need as a result of participating in the Florida Fire Service Needs Assessment Survey.

The bill requires the State Fire Marshal to adopt rules for the program that require grant recipients to:

- Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;
- Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536, F.S.;
- Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and
- Meet the definition of the term “fire service provider” in s. 633.102, F.S.

The bill requires that funds be used to:

- Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division’s electronic database;
- Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear; and
- Purchase self-contained breathing apparatus equipment and purchase fire engine pumper apparatus equipment.
Section 26 appropriates $500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

Rulemaking (Section 25)

The bill provides the DFS rulemaking authority relating to unclaimed property to include property reported to the CFO pursuant to s. 43.19, F.S., relating to unclaimed funds paid to the court; s. 45.032, F.S., relating to the disposition of surplus funds after a judicial sale; s. 732.107, F.S., relating to unclaimed funds in intestate probate proceedings; s. 733.816, F.S., relating to unclaimed funds held by personal representatives in probate proceedings; and s. 744.534, F.S., relating to unclaimed funds in guardianship proceedings.

Effective Date (Section 27)

This bill takes effect July 1, 2016.

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:

PCS/CS/SB 992 creates a system for electronic service of process at DFS. This could result in cost savings for plaintiffs who serve documents at the DFS but reduce revenue for process servers who serve pleadings at the DFS office in Tallahassee.

C. Government Sector Impact:

The DFS anticipates a $54,000 per year recurring savings from reduced postage, printing, and information technology costs due to the changes in the service of process statutes in this bill. Future reductions of two or three OPS positions is anticipated.46

46 See Department of Financial Services, Senate Bill 992 Bill Analysis (January 12, 2016).
The bill appropriates $500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the newly created Volunteer Firefighter Assistance Grant Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 633.107 and 633.135.


IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:

The committee substitute:

• Changes the standards for carbon monoxide detectors in public lodging establishments and requires that the detectors be integrated into the establishment’s fire detection system or connected to the boiler safety circuit so the boiler is prevented from operating when carbon monoxide is detected.
• Removes a provision that increased certain fees for service of process.
• Revises the definition of public adjuster so that licensed health insurance agents can assist insureds with specified issues.
• Changes the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.
• Requires the award of grants to certain fire departments under the Firefighter Assistance Grant Program be prioritized based on the annual Florida Fire Service Needs Assessment Survey.
• Provides for additional rulemaking authority relating to the Division of Unclaimed Property.
• Appropriates the recurring sum of $500,000 from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.
CS by Banking and Insurance on January 19, 2016:
The committee substitute:

- Maintains current law regarding “for-profit organizations” and the Florida Single Audit Act. The original bill excluded for-profit organizations from the Act.
- Creates a procedure for applicants for certification as firefighters who have been convicted of a felony to obtain certification if they demonstrate by clear and convincing evidence that they would not pose a risk to persons or property if they were granted a certificate.
- Creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.
- Requires the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association’s regular membership but does not provide for nominations.
- Provides discretion for the State Fire Marshal to suspend or revoke other certificates when a firefighter or other certificate holder has a certificate suspended or revoked.
- Removes a provision of the original bill relating to sinkhole insurance.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
Appropriations Subcommittee on General Government (Simpson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 359 - 372 and insert:

- carbon monoxide detector sensor devices that are listed as complying with ANSI/UL 2075, Standard for Gas and Vapor Detectors and Sensors, by a Nationally Recognized Testing Laboratory accredited by the Occupational Safety and Health Administration to list products to that standard bear the label of a nationally recognized testing laboratory and have been
tested and listed as complying with the most recent Underwriters Laboratories, Inc., Standard 2034, or its equivalent, unless it is determined that carbon monoxide hazards have otherwise been adequately mitigated as determined by the Division of State Fire Marshal of the Department of Financial Services. Such devices must be integrated with the public lodging establishment’s fire detection system, or connected to the boiler safety circuit and wired so that the boiler is prevented from operating when carbon monoxide is detected until it is reset manually. Any such installation or determination shall be made in accordance with rules adopted by the Division of State Fire Marshal.

And the title is amended as follows:

Delete line 39

and insert:

to exempt a device from such standards; providing an alternative method of installing such devices;

amending s.
Appropriations Subcommittee on General Government (Simpson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 434 - 481 and insert:

insurer or on an unauthorized insurer, which fee shall be deposited into the Administrative Trust Fund.

Section 12. Present paragraph (b) of subsection (2) of section 626.854, Florida Statutes, is redesignated as paragraph (c), and a new paragraph (b) is added to that subsection, to read:
626.854 “Public adjuster” defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(2) This definition does not apply to:

(b) A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claims filing process, or filing a claim, as such assistance relates to coverage under a health insurance policy.

Section 13. Subsection (1) of section 626.907, Florida Statutes, is amended to read:

626.907 Service of process; judgment by default.—

(1) Service of process upon an insurer or person representing or aiding such insurer pursuant to s. 626.906 shall be made by delivering to and leaving with the Chief Financial Officer, his or her assistant or deputy, or another person in charge of the office two copies thereof and the service of process fee as required in s. 624.502. The Chief Financial Officer shall forthwith mail by registered mail, commercial carrier, or any verifiable means, one of the copies of such process to the defendant at the defendant’s last known principal place of business as provided by the party submitting the documents and shall keep a record of all process so served upon him or her. The service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff’s attorney to the defendant at the defendant’s last known
principal place of business, and the defendant’s receipt, or
receipt issued by the post office with which the letter is
registered, showing the name of the sender of the letter and the
name and address of the person to whom the letter is addressed,
and the affidavit of the plaintiff or plaintiff’s attorney
showing a compliance herewith are filed with the clerk of the
court in which the action is pending on or before the date the
defendant is required to appear, or within such further time as
the court may allow.

Section 14. Paragraph (a) of subsection (4) of section
626.921, Florida Statutes, is amended to read:

626.921 Florida Surplus Lines Service Office.—
(4) The association shall operate under the supervision of
a board of governors consisting of:

(a) Five individuals nominated by the Florida Surplus Lines
Association and appointed by the department from the regular
membership of the Florida Surplus Lines Association.

Each board member shall be appointed to serve beginning on the
date designated by the plan of operation and shall serve at the
pleasure of the department for a 3-year term, such term
initially to be staggered by the plan of operation so that three
appointments expire in 1 year, three appointments expire in 2
years, and three appointments expire in 3 years. Members may be
reappointed for subsequent terms. The board of governors shall
elect such officers as may be provided in the plan of operation.

Section 15. Subsection (2) of section 626.9892, Florida
Statutes, is amended to read:

626.9892 Anti-Fraud Reward Program; reporting of insurance
fraud.—

(2) The department may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the Division of Insurance Fraud arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, s. 790.164, s. 790.165, s. 790.166, s. 806.031, s. 806.10, s. 806.111, s. 817.233, or s. 817.234.

And the title is amended as follows:

Delete lines 49 - 56 and insert:

unauthorized insurers; amending s. 626.854, F.S.; revising applicability of the definition of the term “public adjuster”; amending s. 626.907, F.S.; requiring a service of process fee for certain service of process made by the Chief Financial Officer; specifying the determination of a defendant’s last known principal place of business; amending s. 626.921, F.S.; revising membership requirements of the Florida Surplus Lines Service Office board of governors; amending s. 626.9892, F.S.; providing that the department, rather than the Division of Insurance Fraud, investigates certain crimes; adding violations of specified statutes to the Anti-Fraud Reward Program; amending s. 627.7074, F.S.; providing an
Appropriations Subcommittee on General Government (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 579 - 580

and insert:

prioritize the annual award of grants to such combination fire
departments and volunteer fire departments demonstrating need as
a result of participating in the annual Florida Fire Service
Needs Assessment Survey.
And the title is amended as follows:

Delete line 73 and insert:

“combination fire department”; requiring the division to prioritize the annual award of grants to specified fire departments; providing eligibility
Bill No. CS for SB 992

LEGISLATIVE ACTION

Senate Comm: RCS 02/11/2016

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

Senate Amendment (with title amendment)

Between lines 839 and 840 insert:

Section 23. Section 717.138, Florida Statutes, is amended to read:

717.138 Rulemaking authority.—The department shall administer and provide for the enforcement of this chapter. The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.
chapter. The department may adopt rules to allow for electronic filing of fees, forms, and reports required by this chapter. The authority to adopt rules pursuant to this chapter applies to all unclaimed property reported and remitted to the Chief Financial Officer, including, but not limited to, property reported and remitted pursuant to ss. 43.19, 45.032, 732.107, 733.816, and 744.534.

Section 24. For the 2016-2017 fiscal year, the sum of $500,000 in recurring funds from the Insurance Regulatory Trust Fund is appropriated to the Department of Financial Services, and one full-time equivalent position with associated salary rate of 50,000 is authorized, for the purpose of implementing this act.

================ T I T L E A M E N D M E N T =================
And the title is amended as follows:
Delete line 95
and insert:
certification under specified circumstances; amending s. 717.138, F.S.; providing applicability for the department’s rulemaking authority; providing an appropriation; providing
By the Committee on Banking and Insurance; and Senator Brandes

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 48.151, F.S.; authorizing the Department of Financial Services to create an Internet-based transmission system to accept service of process; amending s. 110.1315, F.S.; removing a requirement that the Executive Office of the Governor review and approve a certain alternative retirement income security program provided by the department; amending s. 112.215, F.S.; authorizing the Chief Financial Officer, with the approval of the State Board of Administration, to include specified employees other than state employees in a deferred compensation plan; conforming a provision to a change made by the act; amending s. 137.09, F.S.; removing a requirement that the department approve certain bonds of county officers; amending s. 215.97, F.S.; revising and providing definitions; increasing the amount of a certain audit threshold; exempting specified higher education entities from certain audit requirements; revising the requirements for state-funded contracts or agreements between a state awarding agency and a higher education entity; providing an exception; providing applicability; conforming provisions to changes made by the act; amending s. 322.142, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to provide certain driver license images to the Department of Financial Services for the purpose of investigating allegations of violations of the insurance code; amending s. 374.983, F.S.; naming the Board of Commissioners of the Florida Inland Navigation District, rather than the Chief Financial Officer, as the entity that receives and approves certain surety bonds of commissioners; amending s. 509.211, F.S.; revising certain standards for carbon monoxide detector devices in specified spaces or rooms of public lodging establishments; deleting a provision authorizing the State Fire Marshal of the department to exempt a device from such standards; amending s. 624.307, F.S.; conforming provisions to changes made by the act; specifying requirements for the Chief Financial Officer in providing notice of electronic transmission of process documents; amending s. 624.423, F.S.; authorizing service of process by specified means; reenacting and amending s. 624.502, F.S.; specifying fees to be paid by the requestor to the department or Office of Insurance Regulation for certain service of process on authorized and unauthorized insurers; amending s. 626.907, F.S.; requiring a service of process fee for certain service of process made by the Chief Financial Officer; specifying the determination of a defendant’s last known principal place of business; amending s. 626.921, F.S.; revising membership requirements of the Florida Surplus Lines Service Office board of governors; amending s. 627.7074, F.S.; providing an additional ground for disqualifying a neutral evaluator for disputed sinkhole insurance claims; creating s. 633.107, F.S.; authorizing the department to grant exemptions from disqualification for licensure or certification by the Division of State.
Fire Marshal under certain circumstances; specifying
the information an applicant must provide; providing
the manner in which the department must render its
decision to grant or deny an exemption; providing
procedures for an applicant to contest the decision;
providing an exception from certain requirements;
authorizing the division to adopt rules; creating s.
633.135, F.S.; establishing the Firefighter Assistance
Program for certain purposes; requiring the division
to administer the program and annually award grants to
qualifying fire departments; defining the term
"combination fire department"; providing eligibility
requirements; requiring the State Fire Marshal to
adopt rules and procedures; providing program
requirements; amending s. 633.208, F.S.; revising
applicability of the Life Safety Code to exclude one-
family and two-family dwellings, rather than only such
dwellings that are newly constructed; amending s.
633.216, F.S.; conforming a cross-reference; amending
s. 633.408, F.S.; revising firefighter and volunteer
firefighter certification requirements; specifying the
duration of certain firefighter certifications;
amending s. 633.412, F.S.; deleting a requirement that
the division suspend or revoke all issued certificates
if an individual’s certificate is suspended or
revoked; amending s. 633.414, F.S.; conforming
provisions to changes made by the act; revising
alternative requirements for renewing specified
certifications; providing grounds for denial of, or
disciplinary action against, certifications for a
firefighter or volunteer firefighter; amending s.
633.426, F.S.; revising a definition; providing a date
after which an individual is subject to revocation of
certification under specified circumstances; providing
an effective date.

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

Section 1. Subsection (3) of section 48.151, Florida
Statutes, is amended to read:

48.151 Service on statutory agents for certain persons.—
(3) The Chief Financial Officer or his or her assistant or
depot or another person in charge of the office is the agent
for service of process on all insurers applying for authority to
transact insurance in this state, all licensed nonresident
insurance agents, all nonresident disability insurance agents
licensed pursuant to s. 626.835, any unauthorized insurer under
s. 626.906 or s. 626.937, domestic reciprocal insurers,
fraternal benefit societies under chapter 632, warranty
associations under chapter 634, prepaid limited health service
organizations under chapter 636, and persons required to file
statements under s. 628.461. As an alternative to service of
process made by mail or personal service on the Chief Financial
Officer, on his or her assistant or depot, or on another person
in charge of the office, the Department of Financial Services
may create an Internet-based transmission system to accept
service of process by electronic transmission of documents.

Section 2. Subsection (1) of section 110.1315, Florida

CODING: Words underlined are additions.
Statutes, is amended to read:

110.1315 Alternative retirement benefits; other-personal-
services employees.—

(1) Upon review and approval by the Executive Office of the
Governor, the Department of Financial Services shall provide an
alternative retirement income security program for eligible
temporary and seasonal employees of the state who are
compensated from appropriations for other personal services. The
Department of Financial Services may contract with a private
vendor or vendors to administer the program under a defined-
contribution plan under ss. 401(a) and 403(b) or s. 457 of the
Internal Revenue Code, and the program must provide retirement
benefits as required under s. 3121(b)(7)(F) of the Internal
Revenue Code. The Department of Financial Services may develop a
request for proposals and solicit qualified vendors to compete
for the award of the contract. A vendor shall be selected on the
basis of the plan that best serves the interest of the
participating employees and the state. The proposal must comply
with all necessary federal and state laws and rules.

Section 3. Paragraph (a) of subsection (4) and subsection
(12) of section 112.215, Florida Statutes, are amended to read:

112.215 Government employees; deferred compensation
program.—

(4)(a) The Chief Financial Officer, with the approval of
the State Board of Administration, shall establish such plan or
plans of deferred compensation for state employees and may
include persons employed by a state university as defined in s.
1000.21, a special district as defined in s. 189.012, or a water
management district as defined in s. 189.012, including all such

investment vehicles or products incident thereto, as may be
available through, or offered by, qualified companies or
persons, and may approve one or more such plans for
implementation by and on behalf of the state and its agencies
and employees.

(12) The Chief Financial Officer may adopt any rule
necessary to administer and implement this act with respect to
deferred compensation plans for state employees and persons
employed by a state university as defined in s. 1000.21, a
special district as defined in s. 189.012, or a water management
district as defined in s. 189.012.

Section 4. Section 137.09, Florida Statutes, is amended to
read:

137.09 Justification and approval of bonds.—Each surety
upon every bond of any county officer shall make affidavit that
he or she is a resident of the county for which the officer is
to be commissioned, and that he or she has sufficient visible
property therein unencumbered and not exempt from sale under
legal process to make good his or her bond. Every such bond
shall be approved by the board of county commissioners and by
the Department of Financial Services when the board is satisfied in its judgment that the bond
is legal, sufficient, and proper to be approved.

Section 5. Present paragraphs (h) through (y) of subsection
(2) of section 215.97, Florida Statutes, are redesignated as
paragraphs (i) through (z), respectively, a new paragraph (h) is
added to that subsection, paragraph (a) and present paragraphs
(m) and (v) of that subsection and paragraph (o) of subsection
(8) are amended, present subsections (9), (10), and (11) of that
section are renumbered as subsections (10), (11), and (12), respectively, and a new subsection (9) is added to that section, to read:

215.97 Florida Single Audit Act.—

(2) Definition: As used in this section, the term:

(a) “Audit threshold” means the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such nonstate entity shall be required to have a state single audit, or a project-specific audit, for such fiscal year in accordance with the requirements of this section. Every 2 years the Auditor General, after consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, shall review the threshold amount for requiring audits under this section and may adjust such threshold amount consistent with the purposes of this section.

(h) “Higher education entity” means a Florida College System institution or a state university, as those terms are defined in s. 1000.21.

(n) “Nonstate entity” means a local governmental entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance.

(w) “State project-specific audit” means an audit of one state project performed in accordance with the requirements of subsection (11).

(8) Each recipient or subrecipient of state financial assistance shall comply with the following:

(o) A higher education entity is exempt from the requirements of paragraph (2)(a) and this subsection A contract involving the State University System or the Florida College System funded by state financial assistance may be in the form of:

1. A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;

2. A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;

3. A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or

4. A combination of the contract forms described in subparagraphs 1., 2., and 3.

This subsection applies to any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance.

(a) The contract or agreement must comply with ss. 215.9711 and 216.3475 and must be in the form of one or a combination of the following:

1. A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.

2. A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.
3. A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

(b) If a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, none of the requirements of this section apply to the conduit higher education entity. However, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the requirements of this subsection and subsection (8).

(c) Regardless of the amount of the state financial assistance, this subsection does not exempt a higher education entity from compliance with provisions of law that relate to maintaining records concerning state financial assistance to the higher education entity or that allow access and examination of those records by the state awarding agency, the higher education entity, the Department of Financial Services, or the Auditor General.

(d) This subsection does not prohibit the state awarding agency from including terms and conditions in the contract or agreement which require additional assurances that the state financial assistance meets the applicable requirements of laws, regulations, and other compliance rules.

Section 6. Subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and may be made and issued only:

(a) For departmental administrative purposes;

(b) For the issuance of duplicate licenses;

(c) In response to law enforcement agency requests;

(d) To the Department of Business and Professional Regulation and the Department of Health pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the Department of Business and Professional Regulation or the Department of Health;

(e) To the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters in accordance with ss. 98.045 and 98.075;

(f) To the Department of Revenue pursuant to an interagency agreement for use in establishing and maintaining, modifying, or enforcing support obligations in Title IV-D cases;

(g) To the Department of Children and Families pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415;

(h) To the Department of Children and Families pursuant to an interagency agreement specifying the number of employees in each of that department’s regions to be granted access to the records for use as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations;
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(i) To the Agency for Health Care Administration pursuant to an interagency agreement for the purpose of authorized agencies verifying photographs in the Care Provider Background Screening Clearinghouse authorized under s. 435.12;

(j) To the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the investigation of allegations of violations of the insurance code by licensees and unlicensed persons;

(k) To district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of kin of any investigations, including autopsies and other laboratory examinations, authorized in s. 406.11; or

(l) To the following persons for the purpose of identifying a person as part of the official work of a court:
   1. A justice or judge of this state;
   2. An employee of the state courts system who works in a position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or by his or her designee; or
   3. A government employee who performs functions on behalf of the state courts system in a position that is designated in writing for access by the Chief Justice or a chief judge, or by his or her designee.

Section 7. Subsection (2) of section 374.983, Florida Statutes, is amended to read:

374.983 Governing body.—

(2) The present board of commissioners of the district shall continue to hold office until their respective terms shall expire. Thereafter the members of the board shall continue to be appointed by the Governor for a term of 4 years and until their successors shall be duly appointed. Specifically, commencing on January 10, 1997, the Governor shall appoint the commissioners from Broward, Indian River, Martin, St. Johns, and Volusia Counties and on January 10, 1999, the Governor shall appoint the commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm Beach, and St. Lucie Counties. The Governor shall appoint the commissioner from Nassau County for an initial term that coincides with the period remaining in the current terms of the commissioners from Broward, Indian River, Martin, St. Johns, and Volusia Counties. Thereafter, the commissioner from Nassau County shall be appointed to a 4-year term. Each new appointee must be confirmed by the Senate. Whenever a vacancy occurs among the commissioners, the person appointed to fill such vacancy shall hold office for the unexpired portion of the term of the commissioner whose place he or she is selected to fill. Each commissioner under this act before he or she assumes office shall be required to give a good and sufficient surety bond in the sum of $10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of his or her office, such bond to be approved by and filed with the board of commissioners of the district Chief Financial Officer. Any and all premiums upon such surety bonds shall be paid by the board of commissioners of such district as a necessary expense of the district.

Section 8. Subsection (4) of section 509.211, Florida
Statutes, is amended to read:

509.211 Safety regulations.—

(4) Every enclosed space or room that contains a boiler regulated under chapter 554 which is fired by the direct application of energy from the combustion of fuels and that is located in any portion of a public lodging establishment that also contains sleeping rooms shall be equipped with one or more carbon monoxide detector devices that bear the certification mark from a testing and certification organization accredited in accordance with ISO/IEC Guide 65, General Requirements for Bodies Operating Product Certification Systems, label of a nationally recognized testing laboratory and that have been tested and listed as complying with the most recent Underwriters Laboratories, Inc., Standard 2075, 2034, or its equivalent, unless it is determined that carbon monoxide hazards have otherwise been adequately mitigated as determined by the Division of State Fire Marshal of the Department of Financial Services. Such devices shall be integrated with the public lodging establishment’s fire detection system. Any such installation or determination shall be made in accordance with rules adopted by the Division of State Fire Marshal.

Section 9. Subsection (9) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(9) Upon receiving service of legal process issued in any civil action or proceeding in this state against any regulated person or any unauthorized insurer under s. 626.906 or s. 626.937 which is required to appoint the Chief Financial Officer as its attorney to receive service of all legal process, the Chief Financial Officer, as attorney, may, in lieu of sending the process by registered or certified mail, send the process or make it available by any other verifiable means, including, but not limited to, making the documents available by electronic transmission from a secure website established by the department to the person last designated by the regulated person or the unauthorized insurer to receive the process. When process documents are made available electronically, the Chief Financial Officer shall send a notice of receipt of service of process to the person last designated by the regulated person or the unauthorized insurer to receive legal process. The notice must state the date and manner in which the copy of the process was made available to the regulated person or unauthorized insurer being served and contain the uniform resource locator (URL) for a hyperlink to access files and information on the department’s website to obtain a copy of the process.

Section 10. Section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(1) Service of process upon the Chief Financial Officer as process agent of the insurer under ss. 624.422 and 626.937 shall be made by serving a copy of the process upon the Chief Financial Officer or upon her or his assistant, deputy, or other person in charge of her or his office. Service may also be made by mail or electronically as provided in s. 48.151. Upon receiving such service, the Chief Financial Officer shall retain a record copy and promptly forward one copy of the process by registered or certified mail or by other verifiable means, as provided under s. 624.307(9), to the person last designated by
Section 12. Subsection (1) of section 626.907, Florida Statutes, is amended to read:

Service of process; judgment by default.—
(1) Service of process upon an insurer or person representing or aiding such insurer pursuant to s. 626.906 shall be made by delivering to and leaving with the Chief Financial Officer, his or her assistant or deputy, or another person in charge of the office a copy of the process. The Chief Financial Officer shall forthwith mail by registered mail, commercial carrier, or any verifiable means, one of the copies of such process to the defendant at the defendant’s last known principal place of business as provided by the party submitting the documents and shall keep a record of all process so served upon him or her. The service of process is sufficient, provided notice of such service and a copy of the process are sent or made available in accordance with this section and s. 48.151(3), Florida Statutes, as amended by chapter 2013-41, Laws of Florida, is reenacted and amended to read:

624.502 Service of process fee.—In all instances as provided in any section of the insurance code and s. 48.151(3) in which service of process is authorized to be made upon the Chief Financial Officer or the director of the office, the party requesting service shall pay to the department or office a fee of $15 for such service of process on an authorized insurer or $25 for such service of process on an unauthorized insurer, which fee shall be deposited into the Administrative Trust Fund.

Section 12. Subsection (1) of section 626.907, Florida Statutes, is amended to read:

626.921 Florida Surplus Lines Service Office.—
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2. The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person’s interests are materially adverse to the interests of the parties. The term “substantially related matter” means participation by the neutral evaluator on the same claim, property, or adjacent property.

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

5. The proposed neutral evaluator has, within the preceding 5 years, worked for any entity that performed any sinkhole loss testing, review, or analysis for the property.

   Section 15. Section 633.107, Florida Statutes, is created to read:
   
   633.107 Exemption from disqualification from licensure or certification.—
   
   (1) The department may grant an exemption from disqualification to any person disqualified from licensure or certification by the Division of State Fire Marshal under this chapter because of a criminal record or dishonorable discharge from the United States Armed Forces if the applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, cost of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense and:
   
   (a) At least 5 years have elapsed since the applicant...
(a) Report their activity to the division for submission in
(b) The division may adopt rules to administer this
section.

Section 16. Section 633.135, Florida Statutes, is created
to read:
633.135 Firefighter Assistance Grant Program.—
(1) The Firefighter Assistance Grant Program is created
within the division to improve the emergency response capability
of volunteer fire departments and combination fire departments.
The program shall provide financial assistance to improve
firefighter safety and enable such fire departments to provide
firefighting, emergency medical, and rescue services to their
communities. For purposes of this section, the term "combination
fire department" means a fire department composed of a
combination of career and volunteer firefighters.

(2) The division shall administer the program and annually
award grants to volunteer fire departments and combination fire
departments using the annual Florida Fire Service Needs
Assessment Survey. The purpose of the grants is to assist such
fire departments in providing volunteer firefighter training and
procuring necessary firefighter personal protective equipment,
self-contained breathing apparatus equipment, and fire engine
pumper apparatus equipment. However, the division shall
prioritize the annual award of grants to such fire departments
in a county having a population of 75,000 or less.

(3) The State Fire Marshal shall adopt rules and procedures
for the program that require grant recipients to:
(a) Report their activity to the division for submission in

(CODING: Words deleted are deletions; words underlined are additions.)
the Fire and Emergency Incident Information Reporting System created pursuant to s. 633.136;

(b) Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;

(c) Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536;

(d) Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and

(e) Meet the definition of the term “fire service provider” in s. 633.102.

(4) Funds shall be used to:

(a) Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion pursuant to s. 633.408. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division’s electronic database.

(b) Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear, that complies with NFPA No. 1851, “Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting,” by the National Fire Protection Association.

(c) Purchase self-contained breathing apparatus equipment that complies with NFPA No. 1852, “Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus.”

(d) Purchase fire engine pumper apparatus equipment. Funds

CODING: Words *** are deletions; words ** underlined are additions.
hydrant spacing, increased dead-end roadway length, and a reduction in cul-de-sac sizes relative to the costs from fire sprinkling. A failure to prepare an economic report shall result in the invalidation of the fire sprinkler requirement to any one- or two-family dwelling or any proposed subdivision. In addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-fire sprinklered dwelling, on the basis that a one- or two-family dwelling unit is protected by a fire sprinkler system.

Section 18. Subsection (2) of section 633.216, Florida Statutes, is amended to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents or persons authorized to enforce laws and rules of the State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(2) Except as provided in s. 633.312(2), every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal.

Such person shall meet the requirements of s. 633.412(1)-(4), (6), and:

(a) Have satisfactorily completed the firesafety inspector certification examination as prescribed by division rule; and

(b) Have satisfactorily completed, as determined by division rule, a firesafety inspector training program of at least 200 hours established by the department and administered by education or training providers approved by the department for the purpose of providing basic certification training for firesafety inspectors; or

2. Have received training in another state which is determined by the division to be at least equivalent to that required by the department for approved firesafety inspector education and training programs in this state.

Section 19. Paragraph (b) of subsection (4) and subsection (8) of section 633.408, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(4) The division shall issue a firefighter certificate of compliance to an individual who does all of the following:

(b) Passes the Minimum Standards Course examination within 12 months after completing the required courses.

(8)(a) Pursuant to s. 590.02(1)(e), the division shall establish a structural fire training program of not less than 260 hours. The division shall issue to a person satisfactorily complying with this training program and who has successfully passed an examination as prescribed by the division and who has met the requirements of s. 590.02(1)(e), a Forestry Certificate.
An individual who holds a current and valid Forestry Certificate of Compliance is entitled to the same rights, privileges, and benefits provided for by law as a firefighter.

(9) A Firefighter Certificate of Completion issued under this section expires 4 years after the date of issuance unless renewed as provided in s. 633.414.

Section 20. Section 633.412, Florida Statutes, is amended to read:

633.412 Firefighters; qualifications for certification.—

A person applying for certification as a firefighter must:

(1) Be a high school graduate or the equivalent, as the term may be determined by the division, and at least 18 years of age.

(2) Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country, or dishonorably discharged from any of the Armed Forces of the United States. “Convicted” means a finding of guilt or the acceptance of a plea of guilty or nolo contendere, in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(3) Submit a set of fingerprints to the division with a current processing fee. The fingerprints will be forwarded to the Department of Law Enforcement for state processing and forwarded by the Department of Law Enforcement to the Federal Bureau of Investigation for national processing.

(4) Have a good moral character as determined by investigation under procedure established by the division.

(5) Be in good physical condition as determined by a medical examination given by a physician, surgeon, or physician assistant licensed to practice in the state pursuant to chapter 458; an osteopathic physician, surgeon, or physician assistant licensed to practice in the state pursuant to chapter 459; or an advanced registered nurse practitioner licensed to practice in the state pursuant to chapter 464. Such examination may include, but need not be limited to, the National Fire Protection Association Standard 1582. A medical examination evidencing good physical condition shall be submitted to the division, on a form as provided by rule, before an individual is eligible for admission into a course under s. 633.408.

(6) Be a nonuser of tobacco or tobacco products for at least 1 year immediately preceding application, as evidenced by the sworn affidavit of the applicant.

(2) If the division suspends or revokes an individual’s certificate, the division must suspend or revoke all other certificates issued to the individual by the division pursuant to this part.

Section 21. Section 633.414, Florida Statutes, is amended to read:

633.414 Retention of firefighter, volunteer firefighter, and fire investigator certifications.—

(1) In order for a firefighter to retain her or his...
Firefighter Certificate of Compliance, every 4 years he or she must meet the requirements for renewal provided in this chapter and by rule, which must include at least one of the following:

(a) Be active as a firefighter

(b) Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division.

(c) Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule.

(d) Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408.

(2) In order for a volunteer firefighter to retain her or his Volunteer Firefighter Certificate of Completion, every 4 years he or she must:

(a) Be active as a volunteer firefighter; or

(b) Successfully complete a refresher course consisting of a minimum of 40 hours of training to be prescribed by rule.

(3) Subsection (1) does not apply to state-certified firefighters who are certified and employed full-time, as determined by the fire service provider, as safety inspectors or fire investigators, regardless of their employment status as firefighters or volunteer firefighters.

(4) For the purposes of this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter for a cumulative period of 6 months within a 4-year period.

(5) The 4-year period begins upon issuance of the certificate or separation from employment.

(a) If the individual is certified on or after July 1, 2013, on the date the certificate is issued or upon termination of employment or service with a fire department.

(b) If the individual is certified before July 1, 2013, on July 1, 2014, or upon termination of employment or service thereafter.

(6) A certificate for a firefighter or volunteer firefighter expires if he or she fails to meet the requirements of this section.

(7) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firefighter or volunteer firefighter if the State Fire Marshal finds that any of the following grounds exists:

(a) Any cause for which issuance of a certificate could have been denied if it had then existed and had been known to the division.

(b) A violation of any provision of this chapter or any rule or order of the State Fire Marshal.

(c) Falsification of a record relating to any certificate issued by the division.

Section 22. Subsections (1) and (2) of section 633.426, Florida Statutes, are amended to read:

633.426 Disciplinary action; standards for revocation of certification.—
(1) For purposes of this section, the term:

(a) "Certificate" means any of the certificates issued under s. 633.406.

(b) "Certification" or "certified" means the act of holding a certificate that is current and valid and that meets the requirements for renewal of certification pursuant to this chapter and the rules adopted under this chapter certificate.

(c) "Convicted" means a finding of guilt, or the acceptance of a plea of guilty or nolo contendere, in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(2) Effective July 1, 2013, an individual who holds a certificate is subject to revocation for any of the following:

An individual is ineligible to apply for certification if the individual has, at any time, been:

(a) Conviction convicted of a misdemeanor relating to the certification or to perjury or false statements.

(b) Conviction convicted of a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof, or under the law of any other country.

(c) Dishonorable discharge dishonorably discharged from any of the Armed Forces of the United States.

Section 23. This act shall take effect July 1, 2016.
The Florida Senate

Appearance Record

2/11/2016

Meeting Date

SB 992

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 992

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

This form is part of the public record for this meeting.
The Florida Senate
Committee Agenda Request

To: Senator Alan Hays, Chair
   Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 19, 2016

I respectfully request that Senate Bill #992, relating to Department of Financial Services, be placed on the:

☒ committee agenda at your earliest possible convenience.
☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office
I. Summary:

PCS/CS/SB 1052:

- Revises the number of letters required to provide proof of the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells from two letters to one letter.
- Exempts constructed clay settling areas at phosphate mines from rate of reclamation and financial assurance requirements where its beneficial use has been extended until the beneficial use of the area is completed.
- Allows land set-asides and land use modifications not otherwise required by state law or permit to be used to generate credits for water quality credit trading.
- Modifies the prohibition against granting variances that would result in the provision or requirement being less stringent than federal law. It authorizes moderating provisions or requirements under state law, subject to any necessary approval by the U.S. Environmental Protection Agency.
- Deletes the July 1, 2016, expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund within the Department of Environmental Protection (DEP).
- Allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the facility closure or long-
term care activities if funds under the insurance policy or alternative forms of financial assurance are insufficient for these activities.

- Modifies conditions necessary for the DEP to use funds from the solid waste landfill closure account for the closing and long-term care of solid waste management facilities.
- Allows construction of a stormwater management system to proceed without any further agency action by the DEP or water management district (WMD) if, before construction begins, an electronic self-certification is submitted to the DEP or the WMD which certifies that the proposed system was designed by a Florida registered professional and that the registered professional has certified that the proposed system meets all statutory requirements.
- Requires the stormwater management system to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S.

There is a significant indeterminate fiscal impact to state funds related to solid waste facility closures or long-term care activities. The bill provides an effective date of July 1, 2016.

II. Present Situation:

Water Well Contractor Licenses

Section 373.336, F.S., provides that it is unlawful for any person to construct, repair, or abandon a water well, or operate drilling equipment for those purposes unless that person is employed by or under the supervision of a licensed water well contractor, subject to certain exemptions detailed in s. 373.326, F.S. Each person who engages in the business of a water well contractor must obtain a license from a water management district (WMD). Persons must submit an application to the WMD in which they reside or in which his or her principal place of business is located. In order to take the licensure exam, an applicant must be 18 years old; have at least two years of experience in constructing, repairing, or abandoning water wells; complete an application form; and pay a nonrefundable fee.

To provide evidence that an applicant has at least two years of experience in constructing, repairing, or abandoning water wells, an applicant must submit a letter from a water well contactor and a letter from a water well inspector employed by a governmental agency. An applicant must also submit a list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years.

Clay Settling Areas

In Florida, phosphate mining occurs primarily in central Florida. There are 27 phosphate mines in the state covering more than 491,900 acres. The Florida Legislature requires the reclamation of lands mined for phosphate after July 1, 1975. Reclamation standards for phosphate lands include contouring to safe slopes, providing for acceptable water quality and quantity.

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1 Section 373.323(1), F.S.
2 Section 373.323(2), F.S.
3 Section 373.323(3), F.S.
4 Id.
vegetation, and the return of wetlands to pre-mining type, nature, function, and acreage. A byproduct of phosphate mining is clay, which is deposited in impoundment areas to allow additional settling of the clays. Mining areas must be reclaimed after the completion of mining operations. Reclamation of mining areas must be completed according to a schedule detailed in s. 379.209, F.S. If a mining operator cannot comply with the schedule, the operator must post one or more of several forms of security.

The Department of Environmental Protection (DEP) has encouraged prolonged use of clay settling areas in order to minimize the total acreage used for settling, reduce reclamation delays in areas of the mine that are not used for clay settling, and reduce the number of dams that need to be built. Changes in mining practices to utilize clay-settling areas for longer periods of time have resulted in delays in reclamation of those areas, which has triggered the requirement for operators to post the required financial assurance.

**Water Quality Credit Trading**

Water quality credit trading provides a potentially less costly option for meeting the pollution limits for an impaired waterbody. It is a voluntary, market-based approach for reducing pollution to Florida’s impaired rivers, lakes, streams, and estuaries.

The underlying theory is that achieving pollution abatement at the lowest incremental cost at each additional increment reduced is the most cost effective means to achieve pollution abatement. Trading is based on the premise that different dischargers of a pollutant in a watershed can face substantially different costs to control that pollutant. Trading allows pollutant reduction activities to be valued in the form of credits that can then be traded on a local market to promote cost-effective water quality improvements. Water quality credits are generated when a discharger reduces its loading of a given pollutant below the load allowable for the discharger. Financial savings accrue to parties that buy credits (pollutant reductions) from others for less than the cost of implementing the reductions themselves. Those that sell credits will do so only if the value of the trade is equal to or higher than their investment in the facilities or activities necessary to achieve the pollutant reductions.

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6 Id.
7 Id.
8 Section 378.209(1), F.S.
9 Section 378.208(2)(a)-(f), F.S.
12 Id. at 1-2.
Water quality credit trading can accelerate cleanup because potentially unaffordable costs for individual dischargers can be reduced and cooperative relationships built through trading agreements that foster shared responsibility and commitment. Trading can also accommodate new growth, including new pollutant loadings from urban stormwater, and domestic and industrial wastewater discharges. It offers the possibility for the owners of potential new or increased discharges to purchase credits from existing dischargers so that overall pollutant loads to a watershed are not increased and water quality is preserved.\textsuperscript{15}

Pursuant to Florida Administrative Code Rule 60-306.400(1), activities that are potentially eligible to generate credits include, but are not limited to:

- Installation or modification of water pollution control equipment or activities that are not required to meet pollution control obligations that reduce nutrient loads below those required;
- Operational changes or the modification of a process or process equipment that reduce the quantity of water discharged through reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrient discharged;
- Implementation of structural nonpoint source management controls;
- Installation, operation and maintenance of new drainage projects designed to treat stormwater;
- Implementation by agricultural operations of soil or water treatment technologies or water-quality enhancing production practices or systems that are confirmed in writing the Department of Agriculture and Consumer Services;
- Other pollution controls, technologies or management practices with a demonstrated ability to reduce nutrient loads below those required; and
- A documented change in land use that goes beyond normal crop rotations or other standard agronomic practices that results in a reduction of nutrient loads below those required.

**Variances**

The Florida Air and Water Pollution Control Act was enacted in 1967.\textsuperscript{16} The legislative declaration states in part that, “[t]he pollution of the air and waters of this state constitute a menace to the public health and welfare; create public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of the air and water.”\textsuperscript{17}

Section 403.201, F.S., allows the DEP to grant a variance from provisions of the act or adopted rules and regulations. A variance may be granted for one of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution.
- Compliance with the requirements of the variance will require extensive cost and time, therefore, a variance may be issued with a timetable for the actions required.

\textsuperscript{15} Id.
\textsuperscript{16} Chapter 67-436, Laws of Fla.
\textsuperscript{17} Section 403.021(1), F.S.
To relieve or prevent hardship. The variances granted under this provision are limited to 24 months. A variance granted for electrical power plant and transmission line siting, as described in Part II of ch. 403, F.S., may be granted for the life of the permit.18

The State of Florida is granted authority from the federal government to administer programs such as the CWA, governing water pollution, and the Resource Conservation and Recovery Act (RCRA), governing hazardous waste management. “The most important feature of authorization is the State's agreement to issue permits that conform to the regulatory requirements of the law, to inspect and monitor activities subject to regulation, to take appropriate enforcement action against violators and to do so in a manner no less stringent than the Federal program.”19 Therefore, Florida Statutes prohibit any variance for the discharge of waste into state waters or for hazardous waste management that would result in the requirement being less stringent than an applicable federal requirement. However, research, development, and demonstration permits under s. 403.70715, F.S., are exempt from this provision.20

Relief mechanisms may be included in a permit when the natural conditions for the impacted area results in limits that exceed what is authorized in the permit. The relief mechanisms include:

- A site specific alternative criteria for each water quality criteria;
- A variance or exemption for each water quality criteria;
- A variance or exemption for a public water system from the maximum contaminant level or treatments techniques;
- A variance from other permitting standards or conditions; or
- A major or minor exemption for an aquifer.21

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering,22 waste tire fees,23 and oil related fees, fines and penalties.24 The DEP must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;

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18 Section 403.201(1)(a)-(c), F.S.
20 Section 403.201(2), F.S.
22 Section 403.413(6)(a), F.S.
23 Section 403.718(2), F.S.
24 Section 403.759, F.S.
• Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
• A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.25

Landfill Closure

The DEP is responsible for implementing and enforcing the state solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste.26 Counties are responsible for operating solid waste disposal facilities, which are permitted by the DEP, in order to meet the needs of incorporated and unincorporated areas of the county.27

Florida Administrative Code Chapters 62-701 through 62-722 establish standards for the construction, operations, and closure of solid waste management facilities.28 Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. The closure plan includes:
• A closure design plan;
• A closure operation plan;
• A long-term care plan; and
• A demonstration that proof of financial assurance for long-term care will be provided.29

Every owner or operator of a landfill is liable for the improper operation and closure of a landfill.30 The owner or operator of a landfill owned or operated by a local or state government or the Federal Government is required to establish a fee, a surcharge on existing fees, or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill.31

Operators of solid waste disposal units must receive a closure permit to close a landfill.32 Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility’s approved closure plan.33

These facilities must also perform long-term care for 30 years.34 This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling

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25 Section 403.709(1), F.S.
26 Section 403.705, F.S.
27 Section 403.706, F.S.
30 Section 403.7125(1), F.S.
31 Section 403.7125(2), F.S.
34 Fla. Admin. Code R. 62-701.620(1)
subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.\textsuperscript{35}

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by the DEP; and
- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the implementing bill for the 2015-2016 General Appropriations Act, Chapter 2015-222, Laws of Florida, and will expire July 1, 2016.\textsuperscript{36}

The DEP provides that in cases where there is a viable insurance policy provided for the purposes of financial assurance, the contractor or the DEP can be reimbursed by the insurance company for the allowable closure costs covered by the financial assurance related insurance policy. Currently, there are five solid waste management facilities that are covered by insurance policies and require closure work by contractors to minimize adverse environmental impacts.\textsuperscript{37}

**General Permits**

A general permit is granted for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres.\textsuperscript{38} When the stormwater management system is designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S., there is a rebuttable presumption that the discharge for such system will comply with state water quality standards. The construction of such a system may proceed without any further agency action by the DEP or water management district if, within 30 days after construction begins, an electronic self-certification is submitted to the DEP or applicable WMD that certifies the proposed system was designed by a Florida registered professional to meet the following requirements:

- The total project area involves less than 10 acres and less than two acres of impervious surface;
- No activities will impact wetlands or other surface waters;

\textsuperscript{35} \textit{Id.}

\textsuperscript{36} Ch. 2015-222, s. 53, Laws of Fla.

\textsuperscript{37} DEP, \textit{House Bill 589 Agency Analysis} (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

\textsuperscript{38} Section 403.814, F.S.
• No activities are conducted in, on, or over wetlands or other surface waters;
• Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
• The project is not part of a larger common plan, development, or sale; and
• The project does not:
  o Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;
  o Cause adverse impacts to existing surface water storage and conveyance capabilities;
  o Cause a violation of state water quality standards; or
  o Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042, F.S., or a work of the district established pursuant to s. 373.086, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 373.323, F.S., to change the number of letters attesting to the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells. The bill requires a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency, rather than letters from both.

Section 2 amends s. 378.209, F.S., to provide that when the beneficial use of a clay settling area has been extended, the rate of reclamation requirements and financial assurance requirements for phosphate mines do not become applicable until the beneficial use of the settling area is completed.

Section 3 amends s. 403.067, F.S., to allow the Department of Environmental Protection (DEP) to authorize the generation of credits for water quality credit trading for land set-asides and land-use modifications, including constructed wetlands and other water quality improvement projects, which reduce nutrient loads into nutrient-impaired surface waters. The DEP provides that it already has this authority and has adopted rules that allow such trades.39

Section 4 amends s. 403.201, F.S., to modify the prohibition against granting a variance that would result in a provision or requirement being less stringent than federal law. The bill authorizes moderating provisions or requirements, subject to any necessary approval by the United States Environmental Protection Agency.

Section 5 amends s. 403.709, F.S., to delete the July 1, 2016, expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund. The bill allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the approved facility closure or long-term care activities. Funds within the solid waste landfill closure account may be utilized for this purpose, if the amount available under the insurance policy or alternative form of financial assurance is insufficient or otherwise inaccessible to perform or complete the closing or long-term care of the facility, and the DEP has used all of the funds from the insurance policy or alternative form of financial assurance.

The bill amends the conditions necessary for the DEP to use funds from the solid waste landfill closure account to contract with a third party for the closing and long-term care of a solid waste management facility. Rather than just requiring that a permittee provided proof of financial assurance for closure in the form of an insurance certificate, the permittee must have provided proof of financial assurance when required by permit or rule and, rather than just requiring an insurance certificate, the permittee may have also provided an alternative form of financial assurance mechanism established pursuant to s. 403.7125, F.S.

Section 6 amends s. 403.814, F.S., to require, stormwater management systems to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to ch. 373, part IV, F.S. The bill changes the requirement for the timing of the submittal of an electronic self-certification from within 30 days after construction starts to before construction starts. As part of the self-certification submitted to the DEP or a WMD, the bill specifies that a Florida registered professional must certify that the proposed system will meet the specified requirements in addition to any requirements in part IV of ch. 373, F.S.

Section 7 reenacts s. 373.414(17), F.S., due to changes made by the bill.

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:

PCS/CS/SB 1052 may have a positive indeterminate fiscal impact on phosphate mine operators by exempting them from the financial assurance requirements concerning the reclamation of a clay settling area when its beneficial use has been extended, until its beneficial use has been completed.
C. Government Sector Impact:

The Department of Environmental Protection (DEP) has requested $1,000,000 from the Solid Waste Management Trust Fund in their Fiscal Year 2016-2017 Legislative Budget Request to cover costs for closure and long-term care of facilities. The Senate has included this issue in SB 2500, the Fiscal Year 2016-2017 General Appropriations Bill.

The bill has no other fiscal impact to the DEP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that if insufficient funds exist from the insurance policy or alternative forms of financial assurance, the Department of Environmental Protection (DEP) may use funds from the solid waste landfill closure account to cover costs. This language needs to be modified to provide that if insufficient funds exists, the DEP may use funds from the Solid Waste Management Trust Fund. The solid waste landfill closure account is only authorized to contain insurance policy funding or alternative forms of financial assurance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.323, 378.209, 403.067, 403.201, 403.709, and 403.814.

This bill reenacts 373.414 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:

The CS/CS:
- Removes language that provided incentives for water conservation by limiting the conditions under which a water management district (WMD) may lower allocations in consumptive use permits (CUPs) and directing the WMDs to adopt rule providing water conservation incentives;
- Removes language that makes revisions for certain membership qualifications for the Harris Chain of Lakes Restoration Council and authorization for the Lake County legislative delegation to waive membership qualifications based on good cause;
- Removes the requirement for the Department of Environmental Protection (DEP) to adopt by rule a surface water classification to protect surface waters used for treated potable water supply and to add treated potable waters supply as a designated use of surface water segments in certain circumstances;
• Removes prerequisites for the institution of flow control ordinances by local governments;
• Removes language prohibiting local governments from implementing flow control ordinances that would direct solid waste to a landfill gas-to-energy system of facility;
• Allows construction of a stormwater management system to proceed without any further agency action by the DEP or the WMD if, before construction begins, an electronic self-certification is submitted to the DEP or the WMD that certifies that the proposed system was designed by a Florida registered professional, and that the registered professional has certified that the proposed system meets all statutory requirements;
• Adds language that in order for the DEP to contract for the closing and long-term care of a solid waste management facility, a permittee must have shown proof of financial assurance which can include an alternative form of financial assurance mechanism in addition to an insurance certificate;
• The bill allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the approved facility closure or long-term care activities if the amount available under the insurance policy or alternative form of financial assurance is insufficient or otherwise inaccessible to perform or complete the facility closing or long-term care of the facility;
• Removes the appropriation from the Solid Waste Management Trust Fund in Fiscal Year 2016-2017 for the closure and long-term care of solid waste management facilities; and
• Requires, rather than encourages, the stormwater management system to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S.

CS by Environmental Preservation and Conservation on January 20, 2016:
For constructed clay settling areas, the CS provides that if the beneficial use of a clay settling area has been extended, the rate of reclamation and financial assurance requirements do not become applicable until the beneficial use of the area is completed.

Section 403.709, F.S., establishes the solid waste landfill closure account within the Solid Waste Management Trust Fund. The subsection establishing the account expires July 1, 2016. The CS removes the sunset provision.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
Appropriations Subcommittee on General Government (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (3) of section 373.323, Florida Statutes, is amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(3) An applicant who meets the following requirements shall be entitled to take the water well contractor licensure
examination:

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience shall be demonstrated by providing:

1. Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency.

2. A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), by the applicant. The list shall also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

Section 2. Subsection (4) is added to section 378.209, Florida Statutes, to read:

378.209 Timing of reclamation.—

(4) When the beneficial use of a constructed clay settling area has been extended, the rate of reclamation requirements in paragraphs (1)(a)-(e) and the requirements of s. 378.208 apply to such settling area when the beneficial use of such settling area is completed.
Section 3. Paragraph (i) is added to subsection (8) of section 403.067, Florida Statutes, to read:

403.067 Establishment and implementation of total maximum daily loads.—

(8) WATER QUALITY CREDIT TRADING.—

(i) Land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, which reduce nutrient loads into nutrient impaired surface waters may be used under this subsection.

Section 4. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

403.201 Variances.—

(2) A variance may not be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.70715. However, this subsection does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency.

Section 5. Present subsections (2) through (4) of section 403.709, Florida Statutes, are redesignated as subsections (3) through (5), respectively, and present subsection (5) is amended, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.
(2)(5)(a) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities.

(a) The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has, or had, or was not required to obtain a department permit to operate as a solid waste management facility;

2. The permittee, when required by permit or rule, provided proof of financial assurance for closure in the form of an insurance certificate or an alternative form of financial assurance mechanism established pursuant to s. 403.7125;

3. The department has ordered the facility closed or has deemed the facility abandoned or was ordered to close by the department;

4. The closure of the facility is accomplished in substantial accordance with a closure plan approved by the department; and

5. The department has sufficient written documentation to confirm that the issuer of insurance company issuing the closure insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete closing and long-term care of the facility.

(b) The department shall deposit all the funds received from the insurer or other parties for reimbursing insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure fund.
account.

(c) If the amount available under the insurance policy or alternative form of financial assurance is insufficient or is otherwise inaccessible to perform or complete the facility closing or long-term care under this subsection and the department has used all such funds from the insurance policy or alternative form of financial assurance, the department may use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the approved facility closure or long-term care activities. This subsection expires July 1, 2016.

Section 6. Subsection (12) of section 403.814, Florida Statutes, is amended to read:

403.814 General permits; delegation.—

(12) A general permit is granted for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres meeting the criteria of this subsection. Such stormwater management system must be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373. There is a rebuttable presumption that the discharge from such stormwater management system will comply with state water quality standards. The construction of such a system may proceed without any further agency action by the department or water management district if, before within 30 days after construction begins, an electronic self-certification is submitted to the department or water management district which certifies that the proposed system was designed to meet, and certified by a Florida registered professional as meeting,
to meet the following additional requirements:

(a) The total project area involves less than 10 acres and less than 2 acres of impervious surface;

(b) No activities will impact wetlands or other surface waters;

(c) No activities are conducted in, on, or over wetlands or other surface waters;

(d) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;

(e) The project is not part of a larger common plan, development, or sale; and

(f) The project does not:

1. Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;

2. Cause adverse impacts to existing surface water storage and conveyance capabilities;

3. Cause a violation of state water quality standards; or

4. Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042 or a work of the district established pursuant to s. 373.086.

Section 7. For the purpose of incorporating the amendment made by this act to section 403.201, Florida Statutes, in a reference thereto, subsection (17) of section 373.414, Florida Statutes, is reenacted to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(17) The variance provisions of s. 403.201 are applicable
to the provisions of this section or any rule adopted pursuant to this section. The governing boards and the department are authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part and s. 373.4145.

Section 8. This act shall take effect upon becoming a law.

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

And the title is amended as follows:
Delete everything before the enacting clause and insert:

A bill to be entitled An act relating to environmental control; amending s. 373.323, F.S.; revising eligibility requirements for taking the water well contractor licensure examination; amending s. 378.209, F.S.; exempting certain constructed clay settling areas from reclamation rate and financial responsibility requirements; amending s. 403.067, F.S.; authorizing the use of land set-asides and land use modifications in water quality credit trading; amending s. 403.201, F.S.; providing applicability of prohibited variances concerning discharges of waste into waters of the state and hazardous waste management; amending s. 403.709, F.S.; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste facilities; authorizing the department to contract with a third party for such
closing and long-term care under certain conditions; 
requiring the department to deposit certain funds in 
the solid waste landfill closure account; authorizing 
the department to use funds from the solid waste 
landfill closure account to pay for facility closing 
and long-term care under certain circumstances; 
deleting an expiration date; amending s. 403.814, 
F.S.; requiring that a Florida registered professional 
certify that certain projects meet additional 
requirements; requiring such certification to be 
submitted to the department before, rather than after, 
construction of a stormwater management system begins; 
reenacting s. 373.414(17), F.S., relating to variances 
for activities in surface waters and wetlands, to 
incorporate the amendment made by the act to s. 
403.201, F.S., in a reference thereto; providing an 
effective date.
Appropriations Subcommittee on General Government (Hays) recommended the following:

**Senate Amendment to Amendment (726962)**

Delete lines 116 - 127

and insert:

systems must be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373. There is a rebuttable presumption that the discharge from such systems complies with state water quality standards. The construction of such a system may proceed without any further agency action by the department.
or water management district if, before within 30 days after construction begins, an electronic self-certification is submitted to the department or water management district which certifies that the proposed system was designed by a Florida registered professional, and that the registered professional has certified that the proposed system will meet the following additional requirements:
By the Committee on Environmental Preservation and Conservation; and Senator Hays

A bill to be entitled An act relating to environmental control; amending s. 373.227, F.S.; prohibiting water management districts from modifying or reducing consumptive use permit allocations if actual water use is less than permitted water use due to water conservation measures or specified circumstances; requiring water management districts to adopt rules providing water conservation incentives, including permit extensions; amending s. 373.323, F.S.; revising eligibility requirements for taking the water well contractor licensure examination; amending s. 373.467, F.S.; revising membership qualifications for the Harris Chain of Lakes Restoration Council; authorizing the Lake County legislative delegation to waive such membership qualifications for good cause; providing that resignation or removal of a council member results in a council vacancy; amending s. 373.705, F.S.; requiring water management districts to promote expanded cost-share criteria for additional conservation practices; amending s. 378.209, F.S.; exempting certain constructed clay settling areas from reclamation rate and financial responsibility requirements under certain conditions; amending s. 403.061, F.S.; requiring the Department of Environmental Protection to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply; providing criteria for such rule; authorizing the reclassification of surface waters used for treated potable water supply notwithstanding such rule;  

CODING: Words deleted are deletions; words underlined are additions.
An applicant who meets the following requirements shall be entitled to take the water well contractor licensure examination:

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience shall be demonstrated by providing:

1. Evidence of the length of time the applicant has engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor or an a letter from a water well inspector employed by a governmental agency.

2. A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), by the applicant. The list shall also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

Section 2. Paragraph (a) of subsection (1) and subsection (3) of section 373.467, Florida Statutes, are amended to read:

373.467 The Harris Chain of Lakes Restoration Council.—
There is created within the St. Johns River Water Management District, with assistance from the Fish and Wildlife Conservation Commission and the Lake County Water Authority, the Harris Chain of Lakes Restoration Council.

(i)(a) The council shall consist of nine voting members,
which shall include a representative of waterfront property owners, a representative of the sport fishing industry, a person with experience in an environmental science or regulation, a person with training in biology or another scientific discipline, a person with training as an attorney, a physician, a person with training as an engineer, and two residents of the county who are not required to meet any additional qualifications for membership enumerated in this paragraph, each to be appointed by the Lake County legislative delegation. The Lake County legislative delegation may waive the qualifications for membership on a case-by-case basis if good cause is shown. No person serving on the council may be appointed to a council, board, or commission of any council advisory group agency. The council members shall serve as advisors to the governing board of the St. Johns River Water Management District. The council is subject to the provisions of chapters 119 and 120.

Section 6. Subsection (29) of section 403.061, Florida Statutes, is amended to read:

The council shall meet at the call of its chair, at the request of six of its members, or at the request of the chair of the governing board of the St. Johns River Water Management District. Resignation by a council member, or removal of a council member for failure to attend three consecutive meetings without an excuse approved by the chair, shall result in a vacancy on the council.

Section 4. Subsection (5) is added to section 373.705, Florida Statutes, to read:

(5) The water management districts shall promote expanded water resource development; water supply development.—

The department shall adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply. These designated surface waters shall have the same water quality criteria protections as waters designated for fish.
Florida Senate - 2016 CS for SB 1052

Section 8. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

...this subsection.

Section 8. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

...this subsection.

Section 8. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

...this subsection.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 7. Paragraph (i) is added to subsection (8) of section 403.067, Florida Statutes, to read:

(8) WATER QUALITY CREDIT TRADING.—

(i) Land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired surface waters may be used under this subsection.

Section 8. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

...this subsection.

...this subsection.
4. Closure is accomplished in substantial accordance with a closure plan approved by the department; and

5. The department has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

(b) The department shall deposit the funds received from the insurance company as reimbursement for the costs of the closure closing or long-term care of the facility into the solid waste landfill closure account.

(a) This subsection expires July 1, 2015.

Section 10. Subsection (2) of section 403.713, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

403.713 Ownership and control of solid waste and recovered materials.—

(2) Any local government that undertakes resource recovery from solid waste pursuant to general law or special act may institute a flow control ordinance for the purpose of ensuring that the resource recovery facility receives an adequate quantity of solid waste from solid waste generated within its jurisdiction. Such authority shall not extend to recovered materials, whether separated at the point of generation or after collection, which are intended to be held for purposes of recycling pursuant to the requirements of this part; however, the handling of such materials is subject to applicable state and local public health and safety laws. A flow control ordinance may be instituted under this section by a local government only after it owns, and actively

CODING: Words underlined are deletions; words underlined are additions.
Section 12. For the purpose of incorporating the amendment made by this act to section 403.201, Florida Statutes, in a reference thereto, subsection (17) of section 373.414, Florida Statutes, is reenacted to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(17) The variance provisions of s. 403.201 are applicable to the provisions of this section or any rule adopted pursuant to this section. The governing boards and the department are authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part and s. 373.4145.

Section 13. For the 2016-2017 fiscal year, the sum of $2,339,764 in nonrecurring funds is appropriated to the Department of Environmental Protection from the Solid Waste Management Trust Fund in the Fixed Capital Outlay-Agency Managed-Closing and Long-Term Care of Solid Waste Management Facilities appropriation category for the closing and long-term care of solid waste management facilities.

Section 14. This act shall take effect upon becoming a law.
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic

Name

Diana Ferguson

Job Title

Attorney

Address

119 S Monroe St. Ste 202

Phone

850-681-4788

Email

Dferguson@flashinglight.com

Representing

Florida Chapter, American Society of Landscape Architects

Speaking:  □ For  □ Against  □ Information  
Waive Speaking:  □ In Support  □ Against
(The Chair will read this information into the record.)

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 (10/14/14)
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 2-11-16

Bill Number (if applicable) 1052

Amendment Barcode (if applicable) 900188

Amendment TO

726962

Topic "10-2" General Permit

Name KURT SPITZER

Job Title Exec. Director

Address 719 E. PARK AVE

Tallahassee 32301

Phone 850 228 6212

Email KURTSPIZER@KSA.NET

Speaking: X For □ Against □ Information

Waive Speaking: X In Support □ Against
(The Chair will read this information into the record.)

Representing FLA. STORMWATER ASSOCIATION

Appearing at request of Chair: □ Yes X No

Lobbyist registered with Legislature: X Yes □ No

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

This form is part of the public record for this meeting. S-001 (10/14/14)
**THE FLORIDA SENATE**

**APPEARANCE RECORD**

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

**Meeting Date**

2/11/16

**Bill Number (if applicable)**

1052

**Amendment Barcode (if applicable)**

**Name**

Jim Spragg

**Job Title**

**Address**

310 W College Ave

TLH FL 32301

**Phone**

850-228-1294

**Email**

Jimemagnoliastrategically.com

**Speaking:**

☐ For ☐ Against ☐ Information

Waive Speaking:

☐ In Support ☐ Against

(The Chair will read this information into the record.)

**Representing**

Florida Nursery, Growers & Landscape 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 (10/14/14)
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: 2-11-16

Bill Number (if applicable): 1052

Amendment Barcode (if applicable):

Topic: Environmental Control

Name: Lee Killinger

Job Title: Dir. Pub. Rel., Gov't Affairs

Address: 215 S. Monroe St., Sah 730

Phone: 850.556.4464

Email: Lee.Killinger@misoic.com

City: Tallahassee, FL

State: 32308

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing: Mosaic

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

APPEARANCE RECORD

2/11/16

Meeting Date

SB 1052

Bill Number (if applicable)

Topic ENVIRONMENTAL CONTROL

Name KEYNA CORY

Job Title LOBBYIST

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Street TALLAHASSEE

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Zip

Phone 850 681-1065

Email keynacory@paconsultants.com

Speaking: □ For □ Against □ Information

Waive Speaking: □ In Support □ Against

(The Chair will read this information into the record.)

Representing NATIONAL WASTE + RECYCLING ASSN. FL CHAPTER

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 (10/14/14)
I. Summary:

CS/SB 1176 authorizes the Department of Environmental Protection (DEP) to implement a voluntary state programmatic general permit for all dredge and fill activities impacting ten acres or less of wetlands or other surface waters, subject to agreement with the United States Army Corps of Engineers (Corps), if the general permit is at least as protective of the environment and natural resources as existing state law under part IV of chapter 373, F.S., and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. Additionally, the bill requires that a person seeking to use a statewide programmatic general permit consent to applicable federal wetland jurisdiction criteria.

There is no fiscal impact to the state unless the DEP seeks an expansion of the State Programmatic General Permit (SPGP) program and receives approval from the Corps. Expansion of the program may require additional resources that are indeterminate.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Dredging means excavation in wetlands or other surface waters or excavation in uplands that creates wetlands or other surface waters.\(^1\) Filling means deposition of any material in wetlands or

\(^1\) Section 373.403(13), F.S.
other surface waters. Dirt, sand, gravel, rocks, shell, pilings, mulch, and concrete are all considered fill if they are placed in a wetland or other surface water. Dredging and filling activities are regulated by local governments, the water management districts, the Florida Department of Environmental Protection (DEP), and the U.S. Army Corps of Engineers (Corps).

**Federal Regulation: Section 10 and Section 404 Permitting**

Section 10 of the Rivers and Harbors Act of 1899 (Section 10), regulates virtually all work in, over, and under waters listed as navigable waters of the United States. Examples of projects requiring Section 10 permits include beach nourishment, boat ramps, breakwaters, dredging, filling, mooring buoys, piers, and construction of marina facilities. Additionally, Section 404 of the Clean Water Act governs activities in wetlands and regulates the discharge of “dredged or fill” material into the waters of the United States.

Section 404 establishes a program for permits for the discharge of dredged or fill material into the navigable waters, including wetlands, at specified disposal sites. Activities that are regulated under this program include fill for development, water resource projects, infrastructure development, and mining projects. The Corps has been responsible for regulating activities in navigable waters ways through the granting of permits since the passage of the Rivers and Harbors Act of 1899. Section 404 of the CWA broadened the Corps authority over “dredging and filling” in the waters of the United States, including many wetlands. The Corps administers the permits under the U.S. Environmental Protection Agency (EPA) established guidelines, and subject to an EPA veto on a case-by-case basis.

The basic premise of the permitting program is that no discharge of dredged or fill material may be permitted if:

- A practicable alternative exists that is less damaging to the aquatic environment; or
- The nation’s waters would be significantly degraded.

An individual permit is required for potentially significant impacts. Individual permits are reviewed by the Corps, who evaluates applications under a public interest review, as well as the environmental criteria set forth by the EPA. Under the guidelines no discharge of dredged or fill material may be permitted if there is a practicable alternative to the proposed discharge which would have a less adverse impact on the aquatic ecosystem, so long as such alternative does not

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2 Section 373.403(14), F.S.
6 Id.
9 Id.
have other significant adverse environmental consequences.\textsuperscript{10} Practicable alternatives, include, but are not limited to:

- Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters.
- Discharges or dredged or fill material at other locations in waters of the United States or ocean waters.\textsuperscript{11}

An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.\textsuperscript{12}

**State Assumption**

The CWA authorizes the EPA to issue general permits on a state, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if determined that the activities in such category:

- Are similar in nature;
- Will cause only minimal adverse environmental effects when performed separately; and
- Will have only minimal cumulative adverse effects on the environment.\textsuperscript{13}

General permits are not available for waters that are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto.\textsuperscript{14} This exception prohibits general permits for what are termed “Phase I waters”, the traditional navigable waters of the United States and adjacent wetlands.\textsuperscript{15} Therefore, state assumption under Section 404 does not affect the Corps responsibilities to regulate the navigable waters under Section 10.

To administer its own individual and general permit program, a state must submit an application to the EPA, which includes a complete description of the program it proposes to administer and establish under state law.\textsuperscript{16} In addition, the application must include a statement testifying that the laws of the state provide for adequate authority to carry out the described program.\textsuperscript{17} The EPA then conducts a rigorous assessment of the state’s program and ensures that it is no less stringent than the federal program.\textsuperscript{18} If the EPA authorizes the state to “assume” control over the federal Section 404 permit program, then an applicant would only need to get a state permit for dredged or fill material discharges in certain waters. Any general permit issued is only valid for a period of up to five years.\textsuperscript{19}

\textsuperscript{10} 40 C.F.R. §404(b)(1).
\textsuperscript{11} Id.
\textsuperscript{12} Id. \textsuperscript{404(b)(2).}
\textsuperscript{13} 33 U.S.C. s. 1344(e).
\textsuperscript{14} 33 U.S.C. s. 1344(g).
\textsuperscript{15} Houck at 1255.
\textsuperscript{16} 33 U.S.C. s. 1344(g).
\textsuperscript{17} Id.
\textsuperscript{19} 33 U.S.C. s. 1344(h)(1)(A)(ii).
Two states, Michigan and New Jersey, have assumed administration of the federal permit program.\textsuperscript{20} Other states have reviewed the possibility of assuming Section 404 permitting but have expressed reasons for not pursuing assumption such as lack of funding, limit of program administration to "non-navigable waters," concerns regarding Federal requirements and oversight, availability of alternative mechanisms for state wetlands protection, and the controversial nature of regulation of wetlands and other aquatic resources.\textsuperscript{21} Additionally, the Endangered Species Act poses challenges for state assumption. To be granted assumption a state would have to have an equivalent level of protection as under the Endangered Species Act for listed species.\textsuperscript{22}

In 2005, the Florida Legislature directed the DEP to develop a strategy to consolidate, to the maximum extent practicable, federal and state wetland permitting and secure complete authority over dredge and fill activities impacting 10 acres or less of wetlands and other surface waters, including navigable waters, through the environmental resource permitting.\textsuperscript{23} Most of the waters in Florida are Phase I waters and are not eligible for assumption.\textsuperscript{24} The report concluded that complete assumption of the federal program would require changes to federal and Florida law and recommended that the Legislature consult with the Congressional delegation on opportunities to amend the federal regulations to make assumption more viable.\textsuperscript{25}

**General Permits**

As an alternative to state assumption, the CWA was amended in 1977 to authorize the Corps to issue general permits that:

- Are similar in nature;
- Cause only minimal adverse environmental effects when performed separately;
- Conform to the Section 404(b)(1) guidelines;
- Set forth specific requirements and standards for authorized activities; and
- Terminate within five years.\textsuperscript{26}

A category of general permits was set forth by Corps regulations called programmatic permits.\textsuperscript{27} The St. Johns River Water Management Program was issued a Programmatic General Permit (PGP) on behalf of the Corps for certain types of projects with minor impacts to wetlands or

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\textsuperscript{23} Ch. 2005-273, s. 3, Laws of Fla.


\textsuperscript{25} Id. at 3.

\textsuperscript{26} 33 U.S.C. s. 1344(e).

surface waters. The scope of the PGP is limited to residential, commercial, or institutional projects with up to three acres of impacts to low quality or urbanized non-tidal wetlands of the following four types:

- Wetlands in pine plantations with raised beds in production over twenty years;
- Herbaceous wetlands in improved pasture;
- Wetlands on parcels bordered by at least 75 percent development; or
- Wetlands covered by greater than 80 percent invasive exotic vegetation.

The Corps combined the concepts of a general permit (for “similar” and “minimal activities”), with a programmatic permit (for “duplicative” state programs) and created a State Programmatic General Permit (SPGP). Under a SPGP, the designated state agency issues permits on behalf of the federal government for projects of a defined and limited impact. A SPGP is designed to streamline the permitting process by eliminating duplication of efforts between the Corps and states, while obeying state and federal wetland laws and regulations. Each SPGP is reviewed and reissued every five years by the Corps district with input from other federal agencies, the state, and the public.

Unlike under complete assumption, under a SPGP program the state or agency is authorized to issue federal permits, which means federal resource agency coordination requirements remain. The state or agency reviews the application and makes the initial determination of the level of impact of the proposed permit. Because projects authorized under the SPGP are limited to minimal individual and cumulative impacts, the complexity and physical size of projects are limited as well. Typical wetland impacts allowed in SPGPs range from 5,000 square feet to one acre.

Section 373.4144, F.S., authorizes the DEP and water management districts to implement a voluntary state programmatic general permit for all dredge and fill activities impacting three acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps, if the general permit is at least as protective of the environment and natural resources as existing state law under part IV of chapter 373, F.S., and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899.

Florida was issued a pilot state programmatic general permit (SPGP I) in 1994 which was limited to four categories of activities, including docks, piers and marinas; shoreline stabilization; boat ramps; and maintenance dredging, in only the counties of Duval, Nassau, Clay, and St. Johns. The permit was expanded in 1996 to include the rest of the DEP’s Northeast District (SPGP-II) and to the areas of the other districts, except for Northwest Florida and Monroe County, in 1997.

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29 *Id.* at 1, 2.
30 Houck at 1283.
33 *Id.*
SPGP-III was an expanded version that covered additional types of activities but was later scaled back to the original four project categories.\textsuperscript{34}

SPGP-IV was issued in 2006 by the Corps. The permit covered docks, piers, and marinas; shore stabilization; boat ramps; and maintenance and dredging. SPGP-IV was revised in 2011 for use throughout the entire state, except for Monroe County and other specified areas. SPGP IV-R1 covers the following categories of work:

- Shoreline stabilization;
- Boat ramps and boat launch areas;
- Docks, piers, associated facilities, and other minor piling-supported structures; and
- Maintenance dredging of canals and channels (including removal of organic detrital material from freshwater lakes and rivers).\textsuperscript{35}

The DEP reviews a permit application for the type of work covered under SPGP IV-R1.\textsuperscript{36} The agreement specifies under what circumstances a project is considered green, yellow, or red. If the permit meets all of the conditions of the SPGP program it is processed as “green” in which case issuance of the permit by the DEP constitutes verification of qualification for the corresponding federal permit. “Yellow” projects require additional federal review. The Corps meets with the appropriate federal agencies and a combined federal position on the permit is taken.\textsuperscript{37} The position may state that all concerns have been addressed and the project is now considered “green” and the DEP is authorized to issue the permit; that special conditions may be applied; or that the Corps elects to evaluate the project separately.\textsuperscript{38} If a project has the potential to adversely impact a federally-listed threatened or endangered species or its designated critical habitat then it is considered “red.” If the project is “red” then the DEP and the Corps review the project separately and separate permits are issued.\textsuperscript{39}

In August 2015, the Corps published a draft of the proposed SPGP V.\textsuperscript{40} The permit would add a fifth category of work to include “transient activities (removal of derelict vessels, scientific devices, upland to upland directional drilling, and geotechnical investigations)” to the list of covered categories.\textsuperscript{41} Additionally, the proposed draft would require projects for shoreline stabilization, boat ramps or launches, or dock, piers, or associated facilities that are proposed “anywhere between the shoreline and federally maintained channel, turning basin, etc., of a port or inlet” to be considered “red,” and, therefore, such projects would require the Corps to review the project separately.\textsuperscript{42}

\textsuperscript{34} ASWM at 5.
\textsuperscript{36} SPGP IV-R1 at 1.
\textsuperscript{37} Id. at 4.
\textsuperscript{38} Id.
\textsuperscript{39} Id.
\textsuperscript{41} Id. at 1.
\textsuperscript{42} Id. at 7, 9, and 12.
Wetlands Delineation

Under Florida law, wetlands are defined as those areas that are inundated or saturated by service water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. The DEP in coordination with the water management districts created a statewide methodology for the delineation of the extent of wetlands. Section 373.4211, F.S., provides ratification of the statewide delineation rule. All state, local, and regional governments in Florida delineate wetlands in accordance with the state methodology. Under federal law, wetland boundaries are delineated using the U.S. Army Corps of Engineers 1987 wetland delineation manual adopted in coordination with the Environmental Protection Agency. For most projects, the use of the federal delineation method and the state delineation method result in similar wetland boundaries. However, the primary area of difference between the state and federal methodologies is in the indicator status of certain plants and social conditions.

III. Effect of Proposed Changes:

CS/SB 1176 amends s. 373.4144, F.S., to increase the acreage threshold within which the Department of Environmental Protection (DEP) is authorized to implement a voluntary state programmatic general permit (SPGP) for all dredge and fill activities pursuant to an agreement with the United States Army Corps of Engineers. The bill would authorize the DEP to seek an SPGP program covering dredge and fill activities impacting 10 acres or less of wetlands or other surface waters, including navigable waters.

The bill requires an applicant seeking to use a statewide programmatic general permit to consent to the applicable federal wetland jurisdiction criteria that is authorized by regulations implementing Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act for the limited purpose of implementing the state programmatic general permit.

The bill authorizes the DEP to pursue delegation or assumption of the federal permitting program regulating the discharge of dredged or fill material and removes the requirement that assumption encompass all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

The bill takes effect July 1, 2016.

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43 Section 373.019, F.S.
44 Chapter 62-340, F.A.C.
47 DEP at 6.
48 Id. at 8.
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:
      If the State Programmatic General Permit (SPGP) program is expanded to include dredge and fill activities impacting ten acres or less of wetlands or other surface waters, additional costs incurred by permit applicants may be reduced as a result of the streamlined permitting process.
   C. Government Sector Impact:
      CS/SB 1176 has an indeterminate fiscal impact to the state. If the Department of Environmental Protection (DEP) seeks expansion of its current State Programmatic General Permit program and approval is granted from the United States Army Corps of Engineers, reprogramming the permit tracking and compliance and enforcement applications and databases would be necessary.

VI. Technical Deficiencies:
    None.

VII. Related Issues:
    None.

VIII. Statutes Affected:
    This bill substantially amends section 373.4144 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.)

CS by Environmental Preservation and Conservation on January 27, 2016:
The CS removes the requirement that the delegation or assumption encompass all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
A bill to be entitled
An act relating to dredge and fill activities;
amending s. 373.4144, F.S.; revising the acreage of
wetlands and other surface waters subject to impact by
dredge and fill activities under a state programmatic
general permit; providing that seeking to use such a
permit consents to specified federal wetland
jurisdiction criteria; authorizing the Department of
Environmental Protection to delegate federal
permitting programs for the discharge of dredged or
fill material; deleting certain conditions limiting
when the department may assume federal permitting
programs for the discharge of dredged or fill
material; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 373.4144,
Florida Statutes, are amended to read:
373.4144 Federal environmental permitting.—
(2) (a) In order to effectuate efficient wetland permitting
and avoid duplication, the department and water management
districts are authorized to implement a voluntary state
programmatic general permit for all dredge and fill activities
impacting 10.4 acres or less of wetlands or other surface
waters, including navigable waters, subject to agreement with
the United States Army Corps of Engineers, if the general permit
is at least as protective of the environment and natural
resources as existing state law under this part and federal law
under the Clean Water Act and the Rivers and Harbors Act of
1899.

(b) By seeking to use a statewide programmatic general
permit, an applicant consents to applicable federal wetland
jurisdiction criteria, which are not included pursuant to this
part, but which are authorized by the regulations implementing
s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,
33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors
Act of 1899 as required by the United States Army Corps of
Engineers, notwithstanding s. 373.4145 and for the limited
purpose of implementing the state programmatic general permit
authorized by this subsection.

(3) The department may pursue this section may not preclude
the department from pursuing a series of regional general
permits for construction activities in wetlands or surface
waters or delegation or complete assumption of federal
permitting programs regulating the discharge of dredged or fill
material pursuant to s. 404 of the Clean Water Act, Pub. L. No.
92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the
Rivers and Harbors Act of 1899, so long as the assumption
encompasses all dredge and fill activities in, on, or over
jurisdictional wetlands or waters, including navigable waters,
within the state.

Section 2. This act shall take effect upon becoming a law.
February 2, 2016

The Honorable Alan Hays
Chairman
Appropriations Subcommittee on General Government

RE: C/S SB 1176

Dear Chairman Hays:

Please agenda the following bill at the next opportunity: CS SB 1176

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
State Senator, District 40

Cc: Ms Jamie DeLoach, Staff Director; Ms. Lisa Waddell, Committee Administrative Assistant
I. Summary:

CS/SB 1200 authorizes a state agency, contingent upon authorization in the General Appropriations Act, to negotiate and enter into a pay-for-success contract with a private entity. The bill defines the “pay-for-success contract” as a contract between a state agency and a private entity to fund a high-quality program to address a critical public problem with historically poor outcomes.

The bill specifies the duties of the state agency for a pay-for-success contract. An independent evaluator must determine whether the outcome measures have been met under the contract, and the private entity must report annually to the state. Funding obtained under this program is not considered a procurement item under s. 287.057, F.S.

By December 1, 2016, the Department of Management Services (DMS) must prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

The fiscal impact to state funds is indeterminate and, according to the DMS, can be absorbed within existing resources.

The bill takes effect upon becoming a law.
II. Present Situation:

Pay-for-Success Contract Program

A pay-for-success program allows the state to enter into contracts with private non-profit organizations to provide targeted services. The non-profits will provide initial funding for the services provided under the contract. If the private entity achieves the performance measure outcomes identified in the contract, the entity will have earned the ‘success payment’ from the DMS. This success payment is presumably the costs of the services plus some level of profit or incentive for achieving the contracted outcomes.

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency procurement of personal property and services. Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

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

Contracts for commodities or contractual services in excess of $35,000 must be procured using a competitive solicitation process. However, some specified contractual services and commodities are not subject to competitive-solicitation requirements.

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1 See http://www.sayfiereview.com/page/Lawmakers%20seek%20pay%20for%20success%20program (last visited on January 20, 2016).
2 As defined in s. 287.012(1), F.S., “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.
3 Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.
4 See ss. 287.012(6) and 287.057, F.S.
5 Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., “competitive solicitation” means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
6 See s. 287.057(3)(e), F.S.
The DMS assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.\(^7\)

### III. Effect of Proposed Changes:

**Section 1** provides numerous definitions necessary to implement the pay-for-success contracts. The term “pay-for-success contract” or “contract” is defined as a contract entered into between a state agency and a private entity to fund a high-quality program specified in the General Appropriations Act, to address a critical public problem with historically poor outcomes. The term “private entity” is defined as a private, not-for-profit organization exempt from federal income taxation pursuant to s. 501(c)3 of the Internal Revenue Code of 1986, which enters into a pay-for-success contract with a state agency and subcontracts with one or more entities to provide the actual services. The term “success payment” is defined as the amount paid to a private entity that meets the performance outcome measures established in a pay-for-success contract.

Under the pay-for-success concept, the private entity must secure initial funding for the services provided under the contract from private-sector investors and enter into separate subcontracts with entities providing the services for the identified program.

Contingent upon authorization in the General Appropriations Act, a state agency may negotiate and enter into a pay-for-success contract with a private entity. This contract may be initiated in one fiscal year and continue into subsequent fiscal years and may be paid from the appropriations authorized in any of those fiscal years.

The state agency is required to:

- Determine performance outcome measures to be included in the contract.
- Determine the data to be included in an annual report filed by a private entity pursuant to subsection (4) of this section.
- Select an independent, nationally recognized evaluator through a request for proposals process to annually evaluate the performance outcome measures specified in the contract.
- Ensure that participants of the program or their guardians have given permission to share participate data and signed an acknowledgment that data may be shared with an independent evaluator for research and evaluation purposes, and maintain documentation of the required acknowledgements.

A pay-for-success contract must:

- Be limited to quality programs specified in the General Appropriations Act.
- Require the private entity to underwrite or secure upfront capital from private funders, such as foundations, banks, or businesses, to fund the services provided under the subcontracts.
- Require an independent evaluator to determine whether the specified performance outcomes have been achieved.
- Require a success payment, consistent with the General Appropriations Act, only if the specified performance outcome measures are achieved.

\(^7\) Section 287.032(2), F.S.
• Prohibit the private entity from receiving or viewing any personally identifiable participant information.

The private entity shall annually report to the state for the duration of the contract period. In addition, the bill specifies that funding for a high-quality program under this bill is not considered a procurement item under s. 287.057, F.S.

By December 1, 2016, the DMS shall prescribe the procedures to be used by state agencies in connection with pay-for-success contracts which are consistent with this section.

Section 2 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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 1200 has an indeterminate fiscal impact. Investors who fund the private providers of services could potentially lose their investments if the service provider does not meet the outcome measures whereby the state would not be required to make payment for the services provided.

C. Government Sector Impact:

Funding for pay-for-success contracts is contingent upon authorization and limited to programs specified in the General Appropriations Act. In addition, the bill requires the DMS to prescribe procedures in connection with these contracts. According to the DMS, the impact of the additional workload can be absorbed within existing resources.\(^8\)

\(^8\) Telephone conversation with the DMS staff on February 4, 2016.
VI. Technical Deficiencies:

Lines 67-68 of the bill provide: “Funding obtained for a high-quality program under this section is not a procurement item under s. 287.057, Florida Statutes.” It is unclear whether this provision is intended to deem the private entity’s efforts to obtain private investment not be subject to the competitive procurement process. If this is the intent, the provision is most likely unnecessary.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 287.05715 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on January 26, 2016:

- Revises the definition of “pay-for-success contract;”
- Revises the definition of “private entity;”
- Deletes provisions of the original bill regarding the DMS’s oversight of a pay-for-success contract program;
- Deletes provisions of the original bill regarding the Office of Economic and Demographic Research’s provision of information to state agencies;
- Authorizes a state agency to negotiate or enter into a pay-for-success contract with a private entity, contingent upon authorization in the General Appropriations Act;
- Provides that a pay-for-success contract initiated in one fiscal year may continue into subsequent fiscal years, and may be paid from appropriations authorized in any of those fiscal years;
- Specifies the duties of a state agency for a pay-for-success contract; and
- Requires the DMS to prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introdcer or the Florida Senate.
By the Committee on Governmental Oversight and Accountability; and Senator Bean

A bill to be entitled

An act relating to the Pay-for-Success Contract Program; creating s. 287.05715, F.S.; defining terms; authorizing a state agency to enter into a pay-for-success contract with a private entity under certain circumstances; specifying the duties of the state agency; providing contract requirements; requiring the private entity to annually report to the state agency; providing that a high-quality program is not a procurement item; requiring the Department of Management Services to prescribe certain procedures by a specified date; providing an effective date.

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

Section 1. Section 287.05715, Florida Statutes, is created to read:

287.05715 Pay-for-success contracts.—
(1) As used in this section, the term:
(a) “Pay-for-success contract” or “contract” means a contract between a state agency and a private entity to fund a high-quality program, as specified in the General Appropriations Act, to address a critical public problem with historically poor outcomes.
(b) “Private entity” means a private, not-for-profit organization exempt from federal income taxation pursuant to s. 501(c)3 of the Internal Revenue Code of 1986 which enters into a pay-for-success contract with a state agency and subcontracts with one or more entities to provide the actual services.
(c) “Success payment” means the amount paid to a private entity that meets the performance outcome measures established in the pay-for-success contract.

(2) Contingent upon authorization in the General Appropriations Act, a state agency may negotiate and enter into a pay-for-success contract with a private entity. The contract may be initiated in 1 fiscal year, may continue into subsequent fiscal years, and may be paid from appropriations authorized in any of those fiscal years. The state agency shall:
(a) Determine performance outcome measures to be included in the contract.
(b) Determine the data to be included in an annual report filed by a private entity pursuant to subsection (4).
(c) Select an independent, nationally recognized evaluator through a request for proposals process to annually evaluate the performance outcome measures specified in the contract.
(d) Ensure that participants in the program or their guardians have given permission to share participant data and signed an acknowledgment that the data may be shared with an independent evaluator for research and evaluation purposes, and maintain documentation of the required acknowledgements.

(3) A pay-for-success contract must:
(a) Be limited to programs specified in the General Appropriations Act.
(b) Require the private entity to underwrite or secure upfront capital from private funders, such as foundations, banks, or businesses, to fund the services provided under the subcontracts.
(c) Require an independent evaluator to determine whether the specified performance outcomes have been achieved.
(d) Require a success payment, consistent with the General Appropriations Act, attached to the performance outcomes.

CODING: Words ***stricken*** are deletions; words **underlined** are additions.
Appropriations Act, only if the specified performance outcome measures are achieved.

(e) Prohibit the private entity from receiving or viewing any personally identifiable participant information.

(4) The private entity shall annually report to the state agency for the duration of the contract period.

(5) Funding obtained for a high-quality program under this section is not a procurement item under s. 287.057.

(6) By December 1, 2016, the department shall prescribe procedures to be used by state agencies in connection with pay-for-success contracts which are consistent with this section.

Section 2. This act shall take effect upon becoming a law.
THE FLORIDA SENATE
APPEARANCE RECORD
(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Pay For Success

Name AE Lawson

Job Title Lobbyist

Address 400 N Adams St

Phone 850-545-2021

Email aelawsonj@ạmail.com

Address Street Tallahassee 32301

City State Zip

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Ed Foundation

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 (10/14/14)
THE FLORIDA SENATE

APPEARANCE RECORD

Meeting Date
2.10.2016

Bill Number (if applicable)
S3120

Amendment Barcode (if applicable)

Topic
Pay-Por-Success Contract

Name
Alexandra Dominguez

Job Title
Foundation For Florida’s Future

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Speaking:
☒ For ☐ Against ☐ Information

Waive Speaking:
☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing
Foundation For Florida’s Future

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 (10/14/14)
THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date: 2/11/16

Bill Number (if applicable): SB 1200

Topic: Pay For Success

Name: Summer Pfeiffer

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Address: 1801 Miccosukee Commons Dr.
          Tallahassee, FL 32317

Phone: 850-921-0772

Email: summer.pfeiffer@chsf.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing: Children's Home Society 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.
The Florida Senate

Appearance Record

2/11/2016

Meeting Date

SB 1200

Bill Number (if applicable)

Topic
Relating to Pay-for-Success Contract Program

Name
Carol Bracy

Job Title
Consultant

Address
403 E Park Avenue
Tallahassee, FL 32301

Phone
850.577.0444

Email
carol@ballardfl.com

Speaking:
[ ] For  [ ] Against  [ ] Information

Waive Speaking:
[✓] In Support  [ ] Against
(The Chair will read this information into the record.)

Representing
Nurse-Family Partnership

 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 (10/14/14)
### The Florida Senate  
**Appearance Record**

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

**Meeting Date**
02/11/2016

**Bill Number**
SB 1200

**Amendment Barcode**

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**Topic**
Pay-for-Success Contract Program

**Name**
Heather Turnbull

**Job Title**
Partner

**Address**
112 E Jefferson Street  
Tallahassee, FL 32301

**Phone**
850-681-9111

**Email**
turnbullh@rubingroup.com

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

**Waive Speaking:**
- [X] In Support
- [ ] Against

(The Chair will read this information into the record.)

**Representing**
Community Based Care of Central Florida, Inc.

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

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

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

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

S-001 (10/14/14)
To: Senator Alan Hays, Chair
    Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 19, 2016

I respectfully request that Senate Bill #1200, relating to Pay-for-Success Contract Program, be placed on the:

☐ committee agenda at your earliest possible convenience.
☒ next committee agenda.

[Signature]

Senator Aaron Bean
Florida Senate, District 4
I. Summary:

SB 1206 amends section 11.45, Florida Statutes, to require the Auditor General to conduct annually a performance audit of a randomly selected state agency.

The Auditor General has indicated that the bill will have no fiscal impact.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Background

Auditor General

The position of Auditor General is established by section 2, Article III of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.\(^1\) The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.\(^2\)

The Auditor General, before entering upon the duties of the office, must take the oath of office required of state officers by the State Constitution.\(^3\) At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at

\(^1\) Section 11.42(2), F.S.
\(^2\) Section 11.42(5), F.S.
\(^3\) Section 11.42(4), F.S.
least 10 years and must have no less than 10 years’ experience in an accounting or auditing related field.⁴

To carry out his or her duties, the Auditor General must make all spending decisions within the annual operating budget approved by the President of the Senate and the Speaker of the House of Representatives.⁵ The Auditor General must employ qualified persons necessary for the efficient operation of the Auditor General’s office, must fix their duties and compensation and, with the approval of the President of the Senate and Speaker of the House of Representatives, must adopt and administer a uniform personnel, job classification, and pay plan for employees.⁶

The headquarters of the Auditor General are at the state capital, but to facilitate auditing and to eliminate unnecessary travel, the Auditor General may establish field offices located outside the state capital. The Auditor General must be provided with adequate quarters to carry out the position’s functions in the state capital and in other areas of the state.⁷

All payrolls and vouchers for the operations of the Auditor General’s office must be submitted to the Chief Financial Officer for payment.⁸ The Auditor General may make and enforce reasonable rules and regulations necessary to facilitate authorized audits.⁹

The Auditor General must:¹⁰
- Conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee;
- Annually conduct a financial audit of state government;
- Annually conduct financial audits of all state universities and state colleges;
- Annually conduct financial audits of all accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census;
- Once every three years, conduct financial audits of the accounts and records of all district school boards in counties that have populations of 150,000 or more, according to the most recent federal decennial statewide census;
- At least every three years, conduct operational audits of the accounts and records of state agencies, state universities, state colleges, district school boards, Florida Clerks of Court Operations Corporation, water management districts, and the Florida School of Deaf and the Blind;
- At least every three years, conduct a performance audit of the local government financial reporting system, which means any statutory provision related to local government financial reporting;
- At least every three years, conduct a performance audit of the Department of Revenue’s administration of the ad valorem tax laws;

⁴ Section 11.42(2), F.S.
⁵ Section 11.42(3)(a), F.S.
⁶ Id.
⁷ Section 11.42(6)(a), F.S.
⁸ Section 11.42(6)(b), F.S.
⁹ Section 11.42(7), F.S.
¹⁰ Section 11.45(2), F.S.
Once every three years, review a sample of internal audit reports at each state agency\(^{11}\) to determine compliance with the current Standards for Professional Practice of Internal Auditing or, if appropriate, government auditing standards;

- Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law; and

- Annually conduct operational audits of the accounts and records of eligible nonprofit scholarship-funding organizations receiving eligible contributions under the Florida Tax Credit Scholarship Program\(^{12}\), including any contracts for services with related entities, to determine compliance with the provisions of that program.

The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate regarding:\(^{13}\)

- The accounts and records of any governmental entity created or established by law;
- The information technology programs, activities, functions, or systems of any governmental entity created or established by law;
- The accounts and records of any charter school created or established by law;
- The accounts and records of any direct-support organization or citizen support organization created or established by law;
- The public records associated with any appropriation made by the Legislature to a nongovernmental agency, corporation, or person;
- State financial assistance provided to any nonstate entity\(^{14}\);
- The Tobacco Settlement Financing Corporation;
- Any purchases of federal surplus lands for use as sites for correctional facilities;
- Enterprise Florida, Inc., including any of its boards, advisory committees, or similar groups created by Enterprise Florida, Inc., and programs;
- The Florida Development Finance Corporation or the capital development board or the programs or entities created by the board;
- The records pertaining to the use of funds from voluntary contributions on a motor vehicle registration application or on a driver’s license application;
- The records pertaining to the use of funds from the sale of specialty license plates;
- The acquisition and divestitures related to the Florida Communities Trust Program;
- The Florida Water Pollution Control Financing Corporation;
- The school readiness program, including the early learning coalitions;
- CareerSource Florida, Inc., or other programs or entities created by CareerSource Florida, Inc.;

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\(^{11}\) Section 20.055(1), F.S., defines “state agency” as each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, The Agency for State Technology, the Office of Early Learning, and the state courts system.

\(^{12}\) Section 1002.395, F.S.

\(^{13}\) Section 11.45(3), F.S.

\(^{14}\) Section 215.97, F.S., defines “nonstate entity” as a local government entity, nonprofit organization, or for-profit organization that receives state financial assistance.
• The corporation under contract with the Department of Business and Professional Regulation to provide administrative, investigative, examination, licensing, and prosecutorial support services;
• The Florida Engineers Management Corporation;
• The books and records of any permit holder that conducts race meetings or jai alai exhibitions;
• The corporation known as the Prison Rehabilitative Industries and Diversified Enterprise, Inc., or PRIDE Enterprises;
• The Florida Virtual School;
• Virtual education providers receiving state funds or funds from local ad valorem taxes; and
• The accounts and records of a nonprofit scholarship-funding organization participating in a state sponsored scholarship program authorized by chapter 1002, F.S.

**Auditor General Reports**

Various provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.\(^{15}\) The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee an annual report by December 1\(^{16}\); such report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.\(^ {16}\) In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.\(^ {17}\)

**Florida Tax Credit Scholarship Program**

The Florida Tax Credit Scholarship Program (FTC Program) provides scholarships to eligible low-income students for private school tuition and fees, transportation expenses to a Florida public school located outside of the school district in which the student resides, or developmental research laboratory school.\(^ {18}\) The FTC Program is funded with contributions to private nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax; severance taxes on oil and gas production; self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine, and spirits.\(^ {19}\) The tax credit is equal to 100 percent of the eligible contributions made.\(^ {20}\)

The Department of Education (DOE) must annually verify the eligibility of expenditures for scholarships under the FTC Program using specified audit requirements.\(^ {21}\)

\(^{15}\) Section 11.45(7)(f), F.S.
\(^{16}\) Section 11.45(7)(h), F.S.
\(^{17}\) Id.
\(^{18}\) Section 1002.395(3), (5), and (6)(d), F.S.
\(^{19}\) Section 1002.395(1) and (5), F.S.
\(^{20}\) Sections 220.1875 and 1002.395(5), F.S.
\(^{21}\) Section 1002.395(9)(d), F.S.
III. **Effect of Proposed Changes:**

Section 1 amends section 11.45, F.S., to require the Auditor General to annually conduct a performance audit of a randomly selected state agency.

Section 2 amends section 1002.395, F.S., to conform a cross-reference regarding the DOE’s obligation to verify eligibility of expenditures for scholarships under the Florida Tax Credit Scholarship Program using specified audit requirements.

Section 3 provides an effective date of July 1, 2016.

IV. **Constitutional Issues:**

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

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 Auditor General has indicated that the bill will have no fiscal impact.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.
VIII. Statutes Affected:

This bill amends sections 11.45 and 1002.395 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
A bill to be entitled
An act relating to the Auditor General; amending s. 11.45, F.S.; requiring the Auditor General to annually conduct a performance audit of a randomly selected state agency; amending s. 1002.395, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present paragraphs (g) through (k) of subsection (2) of section 11.45, Florida Statutes, are redesignated as paragraphs (h) through (l), respectively, and a new paragraph (g) is added to that subsection, to read:

11.45 Definitions; duties; authorities; reports; rules.—
(2) DUTIES.—The Auditor General shall:
(g) Annually conduct a performance audit of a randomly selected state agency.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General’s discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

Section 2. Paragraph (d) of subsection (9) of section 1002.395, Florida Statutes, is amended to read:

1002.395 Florida Tax Credit Scholarship Program.—
(9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of Education shall:
(d) Annually verify the eligibility of expenditures as provided in paragraph (6)(d) using the audit required by paragraph (6)(m) and s. 11.45(2)(l).

Section 3. This act shall take effect July 1, 2016.
February 1st, 2016

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

Dear Chairman Hays:

I respectfully request Senate Bill 1206, Auditor General, be considered for placement on the Appropriations Subcommittee on General Government agenda. This piece of legislation will require the Auditor General to conduct a performance audit of a randomly selected state agency annually.

Thank you in advance for your consideration. Please let me know if I can provide you with any additional information.

Sincerely,

Joseph Abruzzo

Cc: Jamie DeLoach, Staff Director
The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: SB 1226
INTRODUCER: Senator Ring
SUBJECT: Administrative Procedures
DATE: February 10, 2016

1. Kim McVaney
2. Davis DeLoach
3. FP

ANALYST STAFF DIRECTOR REFERENCE ACTION

Favorable

Recommend: Favorable

I. Summary:

SB 1226 requires a statement of estimated regulatory costs (SERC) to include the adverse impacts and regulatory costs estimated to occur five years after the effective date of a rule. If a portion of the rule is not fully implemented on the effective date of the rule, the SERC must include the adverse impacts and regulatory costs expected to occur within the first five years after implementation of that portion of the rule.

With these changes to the SERC, more administrative rules may exceed the cost thresholds ($1 million within five years), thus requiring more rules to be subject to ratification by the legislature prior to taking effect.

This bill has an indeterminate fiscal impact.

The bill takes effect July 1, 2016.

II. Present Situation:

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.\(^1\) Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”\(^2\) a rule. Agencies do not have discretion as to whether to engage in rulemaking.\(^3\) To adopt a rule an agency must have a

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\(^1\) Section 120.52(16), F.S.
\(^2\) Section 120.52(17), F.S.
\(^3\) Section 120.54(1)(a), F.S.
general grant of authority to implement a specific law by rulemaking. The statutory authority for rule making must be specific enough to guide an agency’s rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.

An agency begins the formal rulemaking process by filing a notice of the proposed rule, which is published by the Department of State in the Florida Administrative Register. The notice must provide certain information, including the text of the proposed rule, and a summary of the agency’s SERC if one is prepared. The public may also provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.

An agency is required to prepare a SERC if the proposed rule will have an adverse impact on small businesses or if it will increase regulatory costs more than $200,000 (in aggregate) within one year after implementation.

The SERC must include an economic analysis projecting a proposed rule’s adverse effect on specified aspects of the state’s economy or increase in regulatory costs. The economic analysis, mandated for each SERC, must analyze a rule’s potential impact of over $1 million over a five year period after the rule goes into effect. A SERC must provide one of the following analyses:

- The rule’s likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment;
- The likely adverse impact on business competitiveness, productivity, or innovation;
- The analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.

If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the five year period, the rule cannot go into effect until ratified by the Legislature. Legislative ratification is not required for adoption of any of the following types of rules: federal standards, amendments to the Florida Building Code or amendments to the Florida Building Code.

A SERC must also contain estimates of the number of people and entities effected by the proposed rule; cost to the agency and any other governmental entity for implementing the proposed rule; and transactional costs likely to be incurred by people, entities, and governmental

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4 Sections 120.52(8) & 120.536(1), F.S.
6 Section 120.54(3)(a)1, F.S.
7 Section 120.55(1)(b)2, F.S.
8 Sections 120.54(3)(a)1., and 120.541(1)(a), F.S.
9 Section 120.541(1)(a), F.S.
10 Section 120.541(2)(a), F.S.
11 Section 120.541(2)(a)1., F.S.
12 This factor includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
13 Section 120.541(2)(a)2., F.S.
14 Section 120.541(2)(a)3., F.S.
15 Section 120.541(3), F.S.
16 Section 120.541(4), F.S.
agencies for compliance. Finally, a SERC must also contain an analysis of the proposed rule’s impact on small businesses and local governments.

III. **Effect of Proposed Changes:**

The bill requires a SERC to include the adverse impacts and regulatory costs estimated to occur five years after the effective date of a rule. If a portion of the rule is not fully implemented on the effective date of the rule, the SERC must include the adverse impacts and regulatory costs expected to occur within the first five years after implementation of that portion of the rule.

With these changes to the SERC, more administrative rules may exceed the cost thresholds ($1 million within five years), thus requiring more rules to be subject to ratification by the legislature prior to taking effect.

IV. **Constitutional Issues:**

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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:**

SB 1226 may provide an enhanced estimation of economic impacts of agency rules and an enhanced opportunity of local government and private entities to participate in rulemaking and in estimating regulatory costs.

C. **Government Sector Impact:**

The bill has an indeterminate fiscal impact. Currently, state agencies are required to comply with notice, publication, and hearing requirements for preparing SERCs. The bill

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17 Section 120.541(2)(b)-(d), F.S.
18 Section 120.541(2)(e), F.S.
provides additional requirements related to SERCs, which may require agencies to complete more SERCs. Also, the recognition of additional costs in a SERC may increase the number of administrative rules subject to legislative ratification prior to their becoming effective. Compliance with these additional requirements may require agencies to devote more resources to rulemaking.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Agencies may experience some difficulty making estimates for projected costs associated with unimplemented portions of a rule.

Additional administrative rules may be subject to ratification by the Legislature prior to taking effect because the recognition of additional costs may result in rules exceeding the adverse impacts and regulatory cost thresholds. To the extent the ratification process delays the full implementation of a legislatively mandated policy or program, the intent of the Legislature regarding that particular policy or program may be frustrated. The delay may be upwards of 14 months (in the case of a rule that is identified in May of one year and not being ratified until the next legislative session). On the other hand, a better estimate of the full costs and impacts of the policy or program on the private sector will be available for review by the Legislature.

VIII. **Statutes Affected:**

This bill substantially amends section 120.541 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.

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

1  A bill to be entitled
2  An act relating to administrative procedures; amending
3  s. 120.541, F.S.; providing additional requirements
4  for the calculation of estimated adverse impacts and
5  regulatory costs; providing an effective date.
6  
7  Be It Enacted by the Legislature of the State of Florida:
8  
9  Section 1. Subsection (5) is added to section 120.541,
10 Florida Statutes, to read:
11  120.541 Statement of estimated regulatory costs.—
12  (5) For purposes of subsections (2) and (3), adverse
13 impacts and regulatory costs likely to occur within 5 years
14 after implementation of the rule include adverse impacts and
15 regulatory costs estimated to occur within 5 years after the
16 effective date of the rule. However, if any provision of the
17 rule is not fully implemented upon the effective date of the
18 rule, the adverse impacts and regulatory costs associated with
19 such provision must be adjusted to include any additional
20 adverse impacts and regulatory costs estimated to occur within 5
21 years after implementation of such provision.
22  
23  Section 2. This act shall take effect July 1, 2016.
SENATOR JEREMY RING
29th District

February 4, 2016

The Honorable Alan Hays
Appropriations Subcommittee on General Government
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Mr. Chairman,

I am writing to respectfully request your cooperation in placing Senate Bill 1226, relating to Administrative Procedures, on the Appropriations Subcommittee on General Government agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

Jeremy Ring
Senator District 29

cc: Jamie DeLoach, Staff Director
    Lisa Waddell, Committee Administrative Assistant
I. **Summary:**

SB 1228 increases the maximum annual gross sales of cottage food products from $15,000 to $30,000 for a cottage food operation to maintain exempt status from state permitting requirements.

The bill has an indeterminate fiscal impact.

The effective date of the bill is July 1, 2016.

II. **Present Situation:**

**Florida Cottage Food Operation Law**

Chapter 2011-205, Laws of Florida, includes provisions regarding cottage food operations in the state.\(^1\) A cottage food operation is a natural person\(^2\) who produces or packages cottage food products at his or her residence and sells such products in accordance with cottage food operations law. A cottage food product is food that is not potentially hazardous food, as defined by the Department of Agriculture and Consumer Services (DACS) rule, and sold by a cottage food operation.

The DACS defines potentially hazardous foods as a food that requires time/temperature control for safety (TCS) to limit pathogenic micro-organism growth or toxin formation; an animal food that is raw or heat-treated; a plant food that is heat treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic micro-organism growth or toxin formation, or

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1. See ch. 2011-205, s. 21, L.O.F., and s. 500.80, F.S.
2. “Natural person” is undefined for purposes of ch. 500, F.S. *Black’s Law Dictionary* (10th ed. 2014), defines natural person as a human being. This definition would exclude artificial or juridical persons.
garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic micro-organism growth or toxin formation. Examples of foods that could be cottage food products (and are not, therefore, potentially hazardous foods) are:

- Loaf breads, rolls, biscuits;
- Cakes, pastries, and cookies;
- Candies and confections;
- Honey;
- Jams, jellies, and preserves;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars; and
- Popcorn, popcorn balls.

Current law allows a cottage food operation to be exempt from state permitting requirements if the operation complies with cottage food law and has annual gross sales of cottage food products that do not exceed $15,000. The annual gross sales of a cottage food operation include all sales of products from any location, regardless of the types of products sold or number of persons involved in the operation. Any such operation must provide the DACS written documentation to verify annual gross sales.

A cottage food operation is prohibited from selling, or offering to sell, cottage food products over the Internet, by mail order, or at wholesale.

Cottage food products must be prepackaged with a label that contains:

- The name and address of the cottage food operation;
- The name of the cottage food product;
- The ingredients of the cottage food product, in descending order of predominance by weight;
- The net weight or net volume of the cottage food product;
- Allergen information as specified by federal labeling requirements;
- Appropriate nutritional information (if any nutritional claim is made) as specified by federal labeling requirements; and
- The statement, “Made in a cottage food operation that is not subject to Florida’s food safety regulations” printed in 10-point type in a color in a clear contrast to the background of the label.

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4 Id.
5 Section 500.12, F.S.
Additionally, current law provides that:

- A cottage food operation may only sell cottage food products stored on the premises of the operation;
- Cottage food operations are not exempt from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations; and
- A cottage food operation must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person’s residence.

The DACS may investigate complaints that a cottage food operation has violated an applicable provision of state food products law or rule adopted under such law. Upon receiving a complaint, a DACS authorized officer or employee may enter and inspect the cottage food operation’s premises to determine compliance applicable to state law and departmental rule. An operation’s refusal to permit an authorized officer or employee to enter and inspect the premises is grounds for disciplinary action under s. 500.121, F.S.  

State law regarding cottage food operations does not apply to any person operating under a food permit issued pursuant to s. 500.12, F.S.  

Cottage Food Sales in Other States

Many states have adopted laws regarding cottage food operations and production, including Alabama in 2014, Texas and California in 2013, and Michigan in 2010. While regulation varies from state to state, many states have adopted limits to annual gross sales or income from cottage food products including:

- Alabama and Michigan limit annual gross income from sales to $20,000;
- Texas limits annual gross sales to $50,000; and
- California limited annual gross sales starting with $35,000 in 2013, $45,000 in 2014, and $50,000 from 2015 and beyond.

III. Effect of Proposed Changes:

SB 1228 increases the maximum annual gross sales of cottage food products from $15,000 to $30,000 for a cottage food operation to maintain exempt status from state permitting requirements.

The bill does not remove or change other requirements in current law, for a cottage food operation to be exempt from state permitting requirements.

The bill takes effect July 1, 2016.

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7 Chapter 500, F.S.
8 Disciplinary action includes suspension procedures provided for in s. 500.12, F.S., and may include an administrative fine in the Class II category pursuant to s. 570.971, F.S.
9 Permits under this section are required for any person who operates a food establishment or retail food store.
IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:
   None.

B. Public Records/Open Meetings Issues:
   None.

C. Trust Funds Restrictions:
   None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:
   None.

B. Private Sector Impact:
   The impact of SB 1228 on the private sector is indeterminate.

C. Government Sector Impact:
   The fiscal impact on the DACS is indeterminate.

   The Division of Food Safety within the DACS permits 3,067 “limited sales” establishments that operate out of a food production facility and may produce potentially hazardous foods. These permits are issued at a cost of $130 annually. Some of these establishments, who would otherwise qualify as a cottage food operation, may choose to operate out of their residence so as to no longer require a “limited sales” permit and thus take advantage of the increase in maximum allowable annual gross sales. The establishments would still need permitting if they are not in compliance with all other requirements of s. 500.80, F.S. The DACS reported that a decrease in revenue associated with issued permits could have a negative fiscal impact to the General Inspection Trust Fund of $398,710, if all “limited sales” establishments opt to become cottage food operators.¹⁰

VI. Technical Deficiencies:

   None.

¹⁰ DACS Division of Food Safety, Senate Bill #1228: Relating to Cottage Food Operations, January 19, 2016, (on file with the Commerce and Tourism Committee).
VII. **Related Issues:**

The DACS Division of Food Safety noted that in incidences of food-borne illnesses occurring in cottage food products, the division cannot conduct “trace-back” or “trace-forward” activities since cottage food operations are not registered with the DACS and are not required to maintain a listing of where their food products are sold.\(^\text{11}\)

VIII. **Statutes Affected:**

This bill substantially amends section 500.80 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.

\(^{11}\) *Id.*

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
A bill to be entitled
An act relating to cottage food operations; amending
s. 500.80, F.S.; increasing the annual gross sales
limitation for exempting cottage food operations from
certain food and building permitting requirements;
providing an effective date.

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

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

500.80 Cottage food operations.—
(1)(a) A cottage food operation must comply with the
applicable requirements of this chapter but is exempt from the
permitting requirements of s. 500.12 if the cottage food
operation complies with this section and has annual gross sales
of cottage food products that do not exceed $30,000.

Section 2. This act shall take effect July 1, 2016.
I. Summary:

SB 1270 eliminates a requirement that a registrant pay a supplemental registration fee for each brand of pesticide that contains an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit.

The supplemental pesticide registration fee was created by the 2009 Legislature to defray the cost of the Chemical Residue Laboratory (lab) within the Division of Food Safety in the Department of Agriculture and Consumer Services (DACS). Prior to the creation of the fee, the DACS received general revenue to support the lab. Currently, revenues from the supplemental pesticide registration fee support the operations of the lab.

The bill has a significant impact on state funds. The DACS will require $1,801,131 in recurring general revenue to support the Chemical Residue Lab in Fiscal Year 2016-2017, due to the elimination of the supplemental pesticide registration fee provided in this bill.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Each brand of pesticide distributed, sold, or offered for sale in this state must be registered with the DACS. The registrant must pay a biennial fee set at $700 effective January 1, 2009, which is to be deposited into the General Inspection Trust Fund.1 Currently, there are approximately 15,000 pesticide brands registered with the DACS that are subject to this biennial fee.2

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1 S. 487.041(1), F.S.
2 Email from Grace Lovett, Director, Office of Legislative Affairs, Florida Department of Agriculture and Consumer Affairs, (January 14, 2016) (on file with the Senate Committee on Agriculture).
In addition, since January 1, 2009, a supplemental biennial registration fee of $630 is required of registrants of pesticides that contain an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit in Title 40 Code of Federal Regulations, (CFR) part 180.

Revenue from this supplemental fee is used by the DACS for testing pesticides for food safety and is the primary source of funding for the operations of the Chemical Residue Laboratory (lab) within the Division of Food Safety. Prior to January 1, 2009, this testing program received funding from general revenue as a public health program. Currently, there are approximately 6,700 pesticide brands registered with the DACS that are subject to this biennial supplemental fee.

The lab is responsible for the chemical analysis of poisonous or deleterious chemical residues remaining in or on human food produced or marketed in Florida, as well as for the regulatory enforcement of federal pesticide and antibiotic residue tolerances and guidelines for raw agricultural produce. Each year the lab performs more than 400,000 analyses on 3,000 samples.

III. Effect of Proposed Changes:

Section 1 amends s. 487.041, F.S., to eliminate the requirement that a registrant pay a biennial fee of $630 for each registered brand of pesticide containing an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit in Title 40 CFR, part 180.

Section 2 provides that this bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

   None.

B. Public Records/Open Meetings Issues:

   None.

C. Trust Funds Restrictions:

   None.

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4 Email from Grace Lovett (January 14, 2016).
6 Ibid.
V. **Fiscal Impact Statement:**

A. **Tax/Fee Issues:**

See Government Sector Impact.

B. **Private Sector Impact:**

SB 1270 will have a positive fiscal impact on individuals who distribute, sell or offer to sell pesticides due to the elimination of the biennial supplemental pesticide registration fee.

C. **Government Sector Impact:**

The bill has a significant impact on state funds. The DACS estimates a recurring reduction in revenue in the General Inspection Trust Fund of $1,842,876 generated from the elimination of the supplemental pesticide brand registration fee beginning in Fiscal Year 2016-2017. Prior to the creation of the supplemental fee in 2009, the DACS received general revenue to support the Chemical Residue Laboratory (lab). Currently, the DACS expends revenues received from the supplemental fee to fund operations of the lab. There is no appropriation from the General Revenue Fund to off-set the loss in revenue that supports the lab’s operations.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 487.041 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.
A bill to be entitled An act relating to pesticide registration; amending s. 487.041, F.S.; deleting provisions relating to supplemental registration fees for certain pesticides that contain active ingredients for which the United States Environmental Protection Agency has established food tolerance limits; deleting a provision requiring the department to publish a list of certain active ingredients; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 487.041, Florida Statutes, are amended to read:

487.041 Registration.—

(1) (a) Effective January 1, 2009, each brand of pesticide, as defined in s. 487.021, which is distributed, sold, or offered for sale, except as provided in this section, within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered in the office of the department, and such registration shall be renewed biennially. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

1. The name, business mailing address, and street address of the registrant.
2. The name of the brand of pesticide.
3. An ingredient statement and a complete current copy of the labeling accompanying the brand of pesticide, which must conform to the registration, and a statement of all claims to be made for it, including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each “added ingredient.”

(b) Effective January 1, 2009, for the purpose of defraying expenses of the department in connection with carrying out the provisions of this part, each registrant shall pay a biennial registration fee for each registered brand of pesticide. The registration of each brand of pesticide shall cover a designated 2-year period beginning on January 1 of each odd-numbered year and expiring on December 31 of the following year.

(c) Each registration issued by the department to a registrant for a period beginning in an even-numbered year shall be assessed a fee of $700 per brand of pesticide and fee of $200 for each special local need label and experimental use permit, and the registration shall expire on December 31 of the following year. Each registration issued by the department to a registrant for a period beginning in an even-numbered year shall be assessed a fee of $350 per brand of pesticide and fee of $100 for each special local need label and experimental use permit, and the registration shall expire on December 31 of that year.

(d) Effective January 1, 2009, in addition to the fees assessed pursuant to paragraphs (b) and (c), for the purpose of defraying the expenses of the department for testing pesticides for food safety, each registrant shall pay a supplemental biennial registration fee for each registered brand of pesticide that contains an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit in 40 C.F.R. part 180. The department shall biennially provide a list of such active ingredients to the registrant.
2. Each registration issued by the department to a registrant for a period beginning in an odd-numbered year shall be assessed a supplemental registration fee of $630 per brand of pesticide that is subject to the fee pursuant to subparagraph 1.(d)1. Each registration issued by the department to a registrant for a period beginning in an even-numbered year shall be assessed a supplemental registration fee of $315 per brand of pesticide that is subject to the fee pursuant to subparagraph 1. The department shall retroactively assess the supplemental registration fee for each brand of pesticide that registered on or after January 1, 2003, and that is subject to the fee pursuant to subparagraph 1.(d)1.

(d)4. All revenues collected, less those costs determined by the department to be nonrecurring or one-time costs, shall be deferred over the 2-year registration period, deposited in the General Inspection Trust Fund, and used by the department in carrying out the provisions of this chapter. Revenues collected from the supplemental registration fee may also be used by the department for testing pesticides for food safety.

(e)4. If the renewal of a brand of pesticide, including the special local need label and experimental use permit, is not filed by January 31 of the renewal year, an additional fee of $25 per brand of pesticide shall be assessed per month and added to the original fee. This additional fee may not exceed $250 per brand of pesticide. The additional fee must be paid by the registrant before the renewal certificate for the registration of the brand of pesticide is issued. The additional fee shall be deposited into the General Inspection Trust Fund.

(f)4. This subsection does not apply to distributors or retail dealers selling brands of pesticide if such brands of pesticide are registered by another person.

(g)4. All registration fees, including supplemental fees and late fees, are nonrefundable.

(h)4. For any currently registered pesticide product brand that undergoes labeling revisions during the registration period, the registrant shall submit to the department a copy of the revised labeling along with a cover letter detailing such revisions before the sale or distribution in this state of the product brand with the revised labeling. If the labeling revisions require notification of an amendment review by the United States Environmental Protection Agency, the registrant shall submit an additional copy of the labeling marked to identify those revisions.

(i)4. Effective January 1, 2013, all payments of any pesticide registration fees, including supplemental fees and late fees, shall be submitted electronically using the department’s Internet website for registration of pesticide product brands.

(2) The department shall adopt rules governing the procedures for the registration of a brand of pesticide and, for the review of data submitted by an applicant for registration of the brand of pesticide, and for biennially publishing the list of active ingredients for which a brand of pesticide is subject to the supplemental registration fee pursuant to subparagraph 1.(d)1. The department shall determine whether the brand of pesticide is subject to the supplemental registration fee.
pesticide should be registered, registered with conditions, or
tested under field conditions in this state. The department
shall determine whether each request for registration of a brand
of pesticide meets the requirements of current state and federal
law. The department, whenever it deems it necessary in the
administration of this part, may require the manufacturer or
registrant to submit the complete formula, quantities shipped
into or manufactured in the state for distribution and sale,
evidence of the efficacy and the safety of any pesticide, and
other relevant data. The department may review and evaluate a
registered pesticide if new information is made available that
indicates that use of the pesticide has caused an unreasonable
adverse effect on public health or the environment. Such review
shall be conducted upon the request of the State Surgeon General
in the event of an unreasonable adverse effect on public health
or the Secretary of Environmental Protection in the event of an
unreasonable adverse effect on the environment. Such review may
result in modifications, revocation, cancellation, or suspension
of the registration of a brand of pesticide. The department, for
reasons of adulteration, misbranding, or other good cause, may
refuse or revoke the registration of the brand of any pesticide
after notice to the applicant or registrant giving the reason
for the decision. The applicant may then request a hearing,
pursuant to chapter 120, on the intention of the department to
refuse or revoke registration, and, upon his or her failure to
do so, the refusal or revocation shall become final without
further procedure. The registration of a brand of pesticide may
not be construed as a defense for the commission of any offense
prohibited under this part.

Section 2. This act shall take effect July 1, 2016.
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 2/11/16

Bill Number (if applicable) 1270

Amendment Barcode (if applicable)

Topic

Name Jim Speatt

Job Title

Address 310 W College Ave

Street TCH

City FL

State 32301

Zip Phone 850-221-1296

Email Jim@leg.state.fl.us

Speaking: [x] For  [ ] Against  [ ] Information

Waive Speaking: [ ] In Support  [ ] Against
(The Chair will read this information into the record.)

Representing Florida Fertilizer & Agrichemical Association

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

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

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

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

S-001 (10/14/14)
THE FLORIDA SENATE

APPEARANCE RECORD

2/11/16
Meeting Date

PB-1270
Bill Number (if applicable)

Pesticide Fees
Topic

Butch Calhoun
Name

Job Title

119 S. Monroe, Suite 300
Street
Tallahassee, FL 32301
Address
Phone 521-0455

Email

Speaking: ☑ For ☐ Against ☐ Information
Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Fruit & Vegetable 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 (10/14/14)
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 2/11/16

Bill Number (if applicable) SB 1270

Topic  Supplemental Pesticide Registration Fee

Name  Alex Lucas

Job Title

Address  207 Park Avenue West

Street  Tallahassee, FL

City  State  Zip

Phone  (850) 577-6500

Email  alucas@asrlegal.com

Speaking:  □ For  □ Against  □ Information

Waive Speaking:  □ In Support  □ Against

(The Chair will read this information into the record.)

Representing  Florida Fertilizer & Agrochemical 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 (10/14/14)
THE FLORIDA SENATE
APPEARANCE RECORD
(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Bill Number (if applicable)

Topic Pesticide Registration

Name Lisa Henning

Job Title Consultant

Address 242 Office Plaza Dr

Tallahassee Fl 32301

Phone 250-766-8808

Email Lisa@HenningConsulting

State Zip

Speaking: □ For □ Against □ Information
Waive Speaking: □ In Support □ Against
(The Chair will read this information into the record.)

Representing Florida Pest Management 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.
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: Feb 11

Bill Number (if applicable): 1270

Amendment Barcode (if applicable):

Topic: Pesticide Registration

Name: Chris Hansen

Job Title: Ballard Partners

Address: 403 E. Paul Ave

Phone: 577-0444

Email: Chansene.Ballard@FL.com

City: Tallahassee

State: FL

Zip: 32312

Speaking: □ For □ Against □ Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing: BAYER Corp.

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 (10/14/14)
January 19, 2016

The Honorable Alan Hays
Senate Appropriations Subcommittee on General Government, Chair
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays:

I respectfully request that Senate Bill 1270, relating to Pesticide Registration, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Wilton Simpson, State Senator, 18th District

CC: Appropriations Subcommittee on General Government Staff
The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: PCS/SB 1282 (389224)

INTRODUCER: Appropriations Subcommittee on General Government and Senator Dean

SUBJECT: Fish and Wildlife Conservation Commission

DATE: February 15, 2016

ANALYST STAFF DIRECTOR REFERENCE ACTION
1. Istler Rogers EP Favorable
2. Betta DeLoach AGG Recommend: Fav/CS
3. 

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1282 revises statutes within chapter 379, F.S., to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within with the four-level penalty structure. The bill clarifies existing penalties and revises other penalties. Additionally, the bill:

- Offers violators of recreational hunting, freshwater fishing, and saltwater fishing the option of purchasing the respective license or permit rather than paying the cost of such license or permit without actually receiving it in addition to a civil penalty.
- Expands the scope of the civil penalty for illegally killing, taking, possessing, or selling game or fur-bearing animals, while committing burglary or trespassing to include illegally killing, taking, possessing, or selling all fish and wildlife.
- Clarifies that a person possessing certain marine turtle species, hatchlings, or the nests of such marine turtle species commits a third degree felony.
- Clarifies that spearfishing is authorized by the Fish and Wildlife Conservation Commission rule.
- Authorizes, rather than requires, the commission to retain an administrative fee on donations provided by application to the Southeastern Guide Dogs, Inc.

By changing the penalties and allowing the violator an option to obtain a permit or license to bring the individual into compliance with law, the bill has an estimated negative fiscal impact of $85,456 to the Clerks of the Circuit Court and a positive fiscal impact of $50,806 to the FWC.
II. Present Situation:

The Florida Constitution was amended in 1998 to create the Florida Fish and Wildlife Conservation Commission (FWC).\(^1\) The constitution grants the FWC both the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.\(^2\) The FWC additionally has regulatory and executive powers with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission are required to be prescribed by general law.\(^3\)

Certain regulatory functions from three separate agencies, the Game and Freshwater Fish Commission, the Marine Fisheries Commission, and the Department of Environmental Protection, were combined to create the FWC.\(^4\) Beginning in 2005, FWC staff began reviewing all recreational wildlife, freshwater fishing, and saltwater fishing penalties, with the goal of proposing a four-level penalty structure to the Legislature which would provide consistency.\(^5\) In 2006, the Legislature adopted the recommended structure, which provided four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.\(^6\)

In 2008, chapter 370, F.S., relating to the state’s marine fisheries, and chapter 372, F.S, relating to the state’s wildlife and freshwater fisheries statutes, were consolidated into chapter 379, F.S.\(^7\) The four-level penalty structure was retained, but revised to bring in the majority of FWC’s recreational hunting, freshwater fishing, and saltwater fishing violations into one section. Section 379.401, F.S., provides a listing of penalties and violations by level.\(^8\)

Level One Violations

A person commits a Level One violation if he or she violates any of the following provisions:

- Rules or orders relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by the commission.
- Rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the FWC.
- Rules or orders relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.
- Rules or orders relating to vessel size or specifying motor restrictions on specified water bodies.
- Section 379.354(1)-(15), F.S., providing for recreational licenses to hunt, fish, and trap.

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\(^1\) FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 2 (Oct. 23, 2015)(on file with the Senate Committee on Environmental Preservation and Conservation).
\(^2\) Section 9, Art. IV, Fla. Const.
\(^3\) Id.
\(^4\) FWC at 3.
\(^5\) Id.
\(^6\) Id.
\(^7\) Id.
\(^8\) Section 379.401, F.S.
- Section 379.3581, F.S., providing hunter safety course requirements.
- Section 379.3003, F.S., prohibiting deer hunting unless required clothing is worn.\(^9\)

The penalties for Level One violations are as follows:

<table>
<thead>
<tr>
<th>Level One violation</th>
<th>Type of Infraction</th>
<th>Civil Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1(^{st}) offense for failure to possess the required license or permit under s. 379.354, F.S.</td>
<td>Noncriminal(^{10})</td>
<td>$50 plus the cost of the license or permit(^{11})</td>
</tr>
<tr>
<td>2(^{nd}) offense for failure to possess the required license or permit under s. 379.354, F.S., within 36 months of 1(^{st}) offense.</td>
<td>Noncriminal(^{12})</td>
<td>$100 plus the cost of the license or permit(^{13})</td>
</tr>
<tr>
<td>1(^{st}) offense not involving s. 379.354, F.S., license or permit requirements.</td>
<td>Noncriminal(^{14})</td>
<td>$50(^{15})</td>
</tr>
<tr>
<td>2(^{nd}) offense not involving s. 379.354, F.S., license or permit requirements within 36 months of 1(^{st}) offense.</td>
<td>Noncriminal(^{17})</td>
<td>$100(^{18})</td>
</tr>
</tbody>
</table>

**Level Two Violations**

A person commits a Level Two violation if he or she violates any of the following provisions:
- Rules or orders relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
- Rules or orders establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
- Rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
- Rules or orders relating to the feeding of saltwater fish.
- Rules or orders relating to landing requirements for freshwater fish or saltwater fish.
- Rules or orders relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
- Rules or orders relating to tagging requirements for wildlife and fur-bearer animals.
- Rules or orders relating to the use of dogs for the taking of wildlife.
- Rules or orders which are not otherwise classified.
- Rules or orders prohibiting the unlawful use of finfish traps.
- All prohibitions of ch. 379, F.S., which are not otherwise classified.
- Section 379.33, F.S., prohibiting the violation of or noncompliance with commission rules.
- Section 379.407(7), F.S., prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.
- Section 379.2421, F.S., prohibiting the obstruction of waterways with net gear.

\(^{9}\) Section 379.401(1)(a), F.S.  
\(^{10}\) Section 379.401(1)(b), F.S.  
\(^{11}\) Section 379.401(1)(c)1., F.S.  
\(^{12}\) Section 379.401(1)(b), F.S.  
\(^{13}\) Section 379.401(1)(c)2., F.S.  
\(^{14}\) Section 379.401(1)(b), F.S.  
\(^{15}\) Section 379.401(1)(d)1., F.S.  
\(^{16}\) Section 379.401(1)(d)2., F.S.  
\(^{17}\) Section 379.401(1)(b), F.S.  
\(^{18}\) Section 379.401(1)(d)2., F.S.
• Section 379.413, F.S., prohibiting the unlawful taking of bonefish.
• Section 379.365(2)(a) and (b), F.S., prohibiting the possession or use of stone crab traps without trap tags and theft of trap contents or gear.
• Section 379.366(4)(b), F.S., prohibiting the theft of blue crab trap contents or trap gear.
• Section 379.3671(2)(c), F.S., prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.
• Section 379.357, F.S., prohibiting the possession of tarpon without purchasing a tarpon tag.
• Section 379.105, F.S., prohibiting the intentional harassment of hunters, fishers, or trappers.\(^9\)

The penalties for Level Two violations are as follows:

<table>
<thead>
<tr>
<th>Level 2 Violation</th>
<th>Type of Infraction</th>
<th>Civil Penalty or Jail Time</th>
<th>License Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1(^{st}) offense</td>
<td>2(^{nd}) Degree Misdemeanor(^{20})</td>
<td>Max. $500 or Max. 60 days</td>
<td>None</td>
</tr>
<tr>
<td>2(^{nd}) offense within three years of previous Level Two violation (or higher)</td>
<td>1(^{st}) Degree Misdemeanor(^{21})</td>
<td>Min. $250; Max. $1000 or Max. one year</td>
<td>None</td>
</tr>
<tr>
<td>3(^{rd}) offense within five years of two previous Level Two violations (or higher)</td>
<td>1(^{st}) Degree Misdemeanor(^{22})</td>
<td>Min. $500; Max. $1000 or Max. one year</td>
<td>Max. suspension of license for one year</td>
</tr>
<tr>
<td>4(^{th}) offense within ten years of three previous Level Two violations (or higher)</td>
<td>1(^{st}) Degree Misdemeanor(^{23})</td>
<td>Min. $750; Max. $1000 or Max. one year</td>
<td>Max. suspension of license for three years</td>
</tr>
</tbody>
</table>

**Level Three Violations**

A person commits a Level Three violation if he or she violates any of the following provisions:
• Rules or orders prohibiting the sale of saltwater fish.
• Rules or orders prohibiting the illegal importation or possession of exotic marine plants or animals.
• Section 379.407(2), F.S., establishing major violations.
• Section 379.407(4), F.S, prohibiting the possession of certain finfish in excess of recreational daily bag limits.
• Section 379.28, F.S., prohibiting the importation of freshwater fish.
• Section 379.354(17), F.S., prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
• Section 379.3014, F.S., prohibiting the illegal sale or possession of alligators.
• Section 379.404(1), (3), and (6), F.S., prohibiting the illegal taking and possession of deer and wild turkey.
• Section 379.406, F.S., prohibiting the possession and transportation of commercial quantities of freshwater game fish.\(^{24}\)

\(^{9}\) Section 379.401(2)(a), F.S.
\(^{20}\) Section 379.401(2)(b)1., F.S.
\(^{21}\) Section 379.401(2)(b)2., F.S.
\(^{22}\) Section 379.401(2)(b)3., F.S.
\(^{23}\) Section 379.401(2)(b)4., F.S.
\(^{24}\) Section 379.401(3)(a), F.S.
The penalties for Level Three violations are as follows:

<table>
<thead>
<tr>
<th>Level Three violation</th>
<th>Type of Infraction</th>
<th>Civil Penalty or Jail Time</th>
<th>License Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st offense</td>
<td>1st Degree Misdemeanor</td>
<td>Max. $1000/Max. one year</td>
<td>None</td>
</tr>
<tr>
<td>2nd offense within ten years of previous Level Three violation (or higher)</td>
<td>1st Degree Misdemeanor</td>
<td>Min. $750; Max. $1000/Max. one year</td>
<td>Suspension of license or permit for up to three years</td>
</tr>
<tr>
<td>Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.</td>
<td>1st Degree Misdemeanor</td>
<td>Mandatory $1000$^{27}$/Max. one year</td>
<td>May not acquire license or permit for five years</td>
</tr>
</tbody>
</table>

**Level Four Violations**

A person commits a Level Four violation if he or she violates any of the following provisions:

- Section 379.365(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., prohibiting criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., prohibiting the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
- Section 379.354(16), F.S., prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.
- Section 379.404(5), F.S., prohibiting the sale of illegally-taken deer or wild turkey.
- Section 379.405, F.S., prohibiting the molestation or theft of freshwater fishing gear.
- Section 379.409, F.S., prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.$^{28}$

The penalties for Level Four violations are as follows:

<table>
<thead>
<tr>
<th>Level Four violation</th>
<th>Type of Infraction</th>
<th>Civil Penalty or Jail Time</th>
<th>License Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st offense$^{29}$</td>
<td>3rd Degree Felony</td>
<td>Max. $5000/Max. five years</td>
<td>None</td>
</tr>
</tbody>
</table>

Section 379.401(4)(b), F.S., only references ss. 775.082 and 775.083, F.S., in relation to the punishment available for third degree felonies. Section 775.084, F.S., relating to enhanced penalties for habitual felony offenders or habitual violent felony offenders, is not included.

Section 379.401(5), F.S., provides an additional “catch-all” provision that makes violations of chapter 379, F.S., except as provided elsewhere, for a first offense, a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days or up to a $500

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$^{25}$ Section 379.401(3)(b)1., F.S.
$^{26}$ Section 379.401(3)(b)2., F.S.
$^{27}$ Section 379.401(3)(b)3., F.S.
$^{28}$ Section 379.401(4)(a), F.S.
$^{29}$ Section 379.401(4)(b), F.S.
fine. For second or subsequent violations, the person commits a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year or up to a $1,000 fine.\textsuperscript{30}

Section 379.401(6), F.S., authorizes the court to order the suspension or forfeiture of any license or permit issued under chapter 379, F.S., to a person who is found guilty of committing a violation of the chapter.

In 2014, the FWC staff began to review all fish, wildlife, and recreational penalties to ensure that they were “fair, appropriate, meaningful, and consistent.”\textsuperscript{31} The FWC staff discovered, that while the revision in 2008 consolidated a majority of the penalties into the four-level structure, there are statutes relating to recreational activities which have penalties outside of the structure.\textsuperscript{32}

These penalty violations include:

- Section 379.2223, F.S., relating to the control and management of state game lands, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.2257, F.S., relating to cooperative agreements with the U.S. Forest Service.
- Section 379.29, F.S., relating to contaminating fresh waters, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.3511, F.S., relating to the appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.411, F.S., relating to the killing or wounding of any species designated as endangered, threatened, or of special concern, is a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.
- Section 379.4115, F.S., relating to the Florida or wild panther, is a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

In addition to statutes that have penalties outside of the four-level structure, there are statutes within chapter 379, F.S., which do not have specified penalties. Section 379.401(2)(a)11 and (5), F.S., both address penalties for prohibitions or violations that are not covered in chapter 379, F.S.

Section 379.401(2)(a)11., F.S., states:

(2)(a) LEVEL TWO VIOLATIONS.—A person commits a Level Two violation if he or she violates any of the following provisions:
11. All prohibitions in this chapter which are not otherwise classified.\textsuperscript{33}

Section 379.401(5), F.S., states:

(5) VIOLATIONS OF CHAPTER.—Except as provided in this chapter:
(a) A person who commits a violation of any provision of this chapter commits, for the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

\textsuperscript{30} Section 379.401(5), F.S.
\textsuperscript{31} FWC, Senate Bill 1282, Agency Legislative Bill Analysis, pg. 7 (Oct. 23, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
\textsuperscript{32} Id.
\textsuperscript{33} Section 379.401(2)(a)11., F.S.
(b) A person who is convicted of a second or subsequent violation of any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.34

III. Effect of Proposed Changes:

PCS/SB 1282 revises various statutes within chapter 379, F.S., to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within the four-level penalty structure. The bill clarifies existing penalties and revises other penalties.

Revisions to Clarify Penalties Without Changing the Penalty

Level Two Violations

In chapter 379, F.S., there are multiple sections that do not have a specified penalty. Therefore, the penalty defaults to either a Level Two violation pursuant to s. 379.401(2)(a)11., F.S., or to a second or first degree misdemeanor pursuant to s. 379.401(5), F.S. The bill amends the following sections that do not have specified penalties to clarify that the violations of such sections are Level Two violations:

- Section 379.2425, F.S., relating to spearfishing.
- Section 379.295, F.S., prohibiting the use of explosives and other substances in fresh waters.
- Section 379.3502, F.S., prohibiting the loaning, transferring, or using a borrowed or transferred license or permit.
- Section 379.3503, F.S., prohibiting false statements in an application for a license or permit.
- Section 379.3504, F.S., prohibiting entering false information on licenses or permits.
- Section 379.363, F.S., relating to freshwater fish dealer’s licenses.
- Section 379.364, F.S., relating to licenses required for fur and hide dealers.
- Section 379.3751, F.S., relating to required licenses for the taking and possession of alligators.
- Section 379.3752, F.S., relating to required tagging of alligators and hides.

Level Four Violations

In chapter 379, F.S., there are sections that have penalties for violations specified as third degree felonies. The bill amends the following sections to state that the penalties for the violation of the following statues are Level Four violations, which are punishable as third degree felonies:

- Section 379.409, F.S., prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilian or their eggs.
- Section 379.411, F.S., prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 379.4115, F.S., prohibiting the killing of any Florida or wild panther.

34 Section 379.401(5), F.S.
Section 379.354, F.S., relating to Recreational Licenses and Permits

In s. 379.354, F.S., there are only specified violations for subsections (16) and (17). Therefore, violations of the rest of the section should be Level Two violations by default pursuant to s. 379.401(2)(a)11 or second or first degree misdemeanors pursuant to s. 379.401(5). However, there is a cross-reference in s. 379.401, F.S., which lists violations of subsections (1) through (15) of s. 379.354, F.S., as Level One violations. The bill amends s. 379.354, F.S., to clarify that a person who violates such section, unless otherwise provided, commits a Level One violation under s. 379.401, F.S.

Section 379.365, F.S., relating to Stone Crab Regulations

Any person, other than a commercial harvester, who violates commission rules regulating stone crab trap certificates and trap tags under current law commits a Level Two violation. Because violations relating to the conservation of marine resources are provided in s. 379.407, F.S., the bill removes the Level Two violation. Therefore, any person, other than a commercial harvester, who violates commission rules regulating stone crab trap certificates and trap tags is subject to the following penalties:

- Upon a first conviction; imprisonment for a period of not more than 60 days, a fine of not less than $100 nor more than $500, or both the fine and imprisonment.
- On a second or subsequent conviction within 12 months; imprisonment for not more than six months, a fine of not less than $250 nor more than $1,000, or both the fine and imprisonment.35

Increases or Decreases to Penalties

In chapter 379, F.S., there are sections that have penalties for violations specified as second degree misdemeanors. The penalties for second degree misdemeanors are equivalent to Level Two violations, except that the penalties for repeat offenders are increased for Level Two violations. The bill amends the following sections to change the penalties from second degree misdemeanors to Level Two violations:

- Section 379.29, F.S., prohibiting the contamination of fresh waters.
- Section 379.3511, F.S., relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.

Section 379.2223, F.S., provides that the penalty for violating rules necessary for the protection, control, operation, management, or development of lands or waters owned, leased, or otherwise assigned to the FWC for fish and wildlife management purposes is a second degree misdemeanor. The bill amends this section and provides that a person who violates or fails to comply with such rules is subject to penalties as provided in s. 379.401, F.S.

Section 379.2257, F.S., provides that the penalty for violations of rules on areas under a cooperative agreement with the United States Forest Service is a second degree misdemeanor. The bill amends this section to be consistent with the penalties on all other wildlife management areas and provides that a person who violates such rules is subject to penalties as provided in s. 379.401, F.S.

35 Section 379.407(1), F.S.
The bill amends s. 379.357, F.S., to increase the penalty for the illegal sale of tarpon from a Level Two violation to a Level Three violation. This brings consistency with the penalties for violation of rules or orders prohibiting the sale of saltwater species. Additionally, the bill clarifies that the illegal taking, killing, or possessing of tarpon is a Level Two violation.

**Section 379.401, F.S., relating to Penalties and Violations**

The bill substantially amends s. 379.401, F.S. to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within with the four-level penalty structure.

**Level One Violations**

The bill adds the penalties for violating rules or orders relating to the filing of reports and other documents required by persons holding alligator licenses and permits to the list of Level One violations. Also added to the list of Level One violations are the penalties for violating rules or orders requiring the return of unused Convention on International Trade in Endangered Species (CITES) tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.

Under current law, the civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354, F.S., is $50 plus the cost of the license or permit. If the person has previously committed the same Level One violation within the preceding 36 months, the civil penalty is $100 plus the cost of the license or permit. The bill provides an alternative for people who violate the license and permit requirements of s. 379.354, F.S., except violations of subsection (6) relating to pier licenses, subsection (7) relating to vessel licenses, paragraph (8)(f) relating to special use permits for limited entry hunting and fishing activities, or paragraph (8)(h) relating to recreational user permits. A person would be able to purchase the license or permit rather than paying the cost of the license or permit as part of the civil penalty. The bill requires submission of the proof of purchase of the license or permit with the civil penalty. Additionally, the bill increases the civil penalty for any person who has previously committed the same Level One violation within the preceding 36 months from $100 to $250.

**Level Two Violations**

The bill adds the following references to the list of Level Two violations (these were Level Two violations by default or were revised to Level Two violations):

- Rules or orders requiring the maintenance of records relating to alligators.
- Return of unused CITES tags issued under alligator programs other than the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.
- Section 379.2425, F.S., relating to spearfishing.
- Section 379.29, F.S., prohibiting the contamination of fresh waters.
- Section 379.295, F.S., prohibiting the use of explosives and other substances in fresh waters.
- Section 379.3502, F.S., prohibiting loaning, transferring, or using a borrowed or transferred license or permit.
- Section 379.3503, F.S., prohibiting false statements in an application for a license or permit.
- Section 379.3504, F.S., prohibiting entering false information on licenses or permits.
• Section 379.3511, F.S., relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.
• Section 379.363, F.S., relating to freshwater fish dealer’s licenses.
• Section 379.364, F.S., relating to licenses required for fur and hide dealers.
• Section 379.3751, F.S., relating to required licenses for the taking and possession of alligators.
• Section 379.3752, F.S., relating to required tagging of alligators and hides.

The bill removes ss. 379.33 and 379.407(7), F.S., from the list of Level Two violations. Section 379.33, F.S., was amended to remove the penalty provided in the section because it was an inaccurate statement. This section no longer contains a Level Two violation and, consequently, its cross-reference is removed from the list of penalties. Section 379.407(7), F.S., provides penalties for the unlicensed sale, purchase, or harvest relating to commercial saltwater fishing activities. As s. 379.401, F.S., provides penalties related to recreational activities, the bill removes the cross-reference to s. 379.407(7), F.S., from the section.

The bill amends the following references already on the Level Two list:
• Rules or orders of the commission prohibiting the unlawful use of finfish traps, to reference any traps, unless otherwise provided.
• Section 379.2421, F.S., for consistency.
• Section 379.357, F.S., to clarify that only a violation of subsection (3) of that section, prohibiting the take, kill, or possession of tarpon without purchasing a tarpon tag, is a Level Two violation.
• Section 379.365(2)(a), F.S., to remove the provision prohibiting the possession or use of stone crab traps without trap tags.
• Section 379.3671(2)(c), F.S., to remove the reference prohibiting the possession or use of spiny lobster traps without trap tags or certificates.
• All prohibitions in this chapter which are not otherwise classified, to include all requirements in this chapter which are not otherwise classified.

Level Three Violations

The bill clarifies that not all violations within s. 379.407(2), F.S., are Level Three violations and adds the penalty for violating s. 379.357(4), F.S., which prohibits the sale, transfer, or purchase of tarpon.

Level Four Violations

The bill amends the following references already on the Level Four list to clarify that there are other penalties within those provisions that are not Level Four violations:
• Section 379.365(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
• Section 379.366(4)(c), F.S., prohibiting criminal activities relating to the taking and harvesting of blue crabs.
• Section 379.367(4), F.S., prohibiting the willful molestation of spiny lobster gear.
• Section 379.3671(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
The bill adds the following sections to the list of Level Four violations (these were third degree felonies):

- Section 379.411, F.S., prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 379.4115, F.S., prohibiting the killing of any Florida or wild panther.

The bill amends the penalty for a Level Four violation to include s. 775.084, F.S., relating to penalties for habitual felony offenders.

**Illegal Activities While Committing Burglary or Trespass**

The bill repeals s. 379.403, F.S., relating to the taking of game or fur-bearing animals while committing burglary or trespass, and moves the language to s. 379.401, F.S., with the following changes:

- Adds violations pertaining to orders which prohibit the killing, taking, possessing or selling of fish and wildlife.
- Increases the penalty from a $250 fine to a $500 fine.
- Expands the scope from game or fur-bearing animals to all fish and wildlife.

**Violations of the Chapter**

The bill removes s. 379.401(5), F.S., which provides an additional catch-all provision. However, s. 379.401(2)(a)13., F.S., retains the catchall that provides that all requirements or prohibitions in chapter 379, F.S., which are not otherwise classified are Level Two violations.

**Additional Changes**

The bill amends s. 379.2425, F.S., to clarify that spearfishing is authorized under certain circumstances by FWC rule or order.

The bill amends s. 379.2431, F.S., to prohibit knowingly possessing any marine turtle or the eggs or nests of marine turtles and to prohibit knowingly possessing, taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing any marine turtle hatchling, or parts thereof. The bill provides that a person, firm, or corporation that illegally possesses any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in s. 379.2431, F.S., commits a felony of the third degree, punishable by a term of imprisonment of up to five years or a maximum fine of $5,000 or additional penalties for violent or habitual felony offenders. The bill clarifies that a person, firm, or corporation may not take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any hatchling, or parts thereof, of any marine turtle species unless authorized by FWC rule.

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36 The term “game” is defined by s. 379.101, F.S., to mean “deer, bear, squirrel, rabbits, and, where designated by commission rules, wild hogs, ducks, geese, rails, coots, gallinules, snipe, woodcock, wild turkeys, grouse, pheasants, quail, and doves.”

37 The term “fur-bearing animals” is defined by s. 379.101, F.S., to mean “muskrat, mink, raccoon, otter, civet cat, skunk, red and gray fox, and opossum.”

38 Rule 68B-20.003, F.A.C., authorizes spearfishing if provided in other marine fisheries rules.
The bill amends s. 379.33, F.S., to strike language relating to an inaccurate statement that states “except as provided under s. 379.401, F.S., any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.407(1).” This statement is inaccurate because violators of FWC rules may also be punished under s. 379.4015, F.S., or chapter 327, F.S., for example.\(^{39}\)

The bill amends s. 379.3502, F.S., to remove language prohibiting a person from altering or changing in any manner any license or permit issued pursuant to chapter 379, F.S. The section covers illegally loaning or transferring a permit and not altering or changing a permit. Section 379.354(16), F.S., makes forging or counterfeiting permits a Level Four violation.

The bill amends s. 379.357, F.S., to clarify that the purchase of a tarpon tag does not give the purchaser any right to harvest or possess tarpon in contravention of FWC rule.

Individuals purchasing a license or permit from the FWC may voluntarily authorize an additional payment of $2 with their application fee to be provided to the Southeastern Guide Dogs, Inc.\(^{40}\) The bill amends s. 379.359, F.S., to authorize, rather than require, the FWC to retain $0.90 of the fee. This enables the FWC to send the full amount to Southeastern Guide Dogs Inc., minus administrative costs.

The bill takes effect July 1, 2016.

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.

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\(^{40}\) Section 379.359, F.S.
B. Private Sector Impact:

As the penalties for some violations are increased or decreased, PCS/SB 1282 may have an indeterminate fiscal impact on individuals who violate chapter 379, F.S.

Southeastern Guide Dogs, Inc. may receive an indeterminate positive fiscal impact if applicants for recreational hunting or fishing licenses choose to donate $2 to the charity. Under the bill, the provision requiring FWC to retain $0.90 is removed and, therefore, FWC may provide the charity with the full $2, minus administrative costs.

C. Government Sector Impact:

The FWC estimates the net negative impact to the Clerks of the Circuit Court is $85,456 annually. This represents all the changes to violations if the violators choose the alternative option provided under the bill and purchase a license or permit rather than paying the cost of such license or permit when cited for a violation.41

There is an estimated positive fiscal impact on the FWC if violators purchase the recreational licenses or permits. The proceeds from license or permit sales would go into different trust funds depending on the type of license or permit being acquired.42 The FWC has estimated the bill would increase funds collected by $50,806 annually.43

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:


This bill repeals section 379.403 of the Florida Statutes.

41 FWC at 20.
42 Id. at 21.
43 Id.
IX. Additional Information:

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

**Recommended CS by Appropriations Subcommittee on General Government on February 11, 2016:**
The CS removes the definition of the term “fish and wildlife,” the cross-reference to the definition, and the sections that contained revisions to cross-references that were necessary as a result of adding the definition to s. 379.401, F.S.

The CS makes it a third degree felony to knowingly possess marine turtles or the eggs or nests of marine turtles. The CS clarifies the prohibition on knowingly taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing to include hatchlings or parts thereof.

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.
Appropriations Subcommittee on General Government (Dean) recommended the following:

```plaintext
Senate Amendment (with title amendment)

Delete lines 91 - 101.
Delete lines 661 - 662
and insert:
taking, possessing, or selling fish and wildlife, in or out of
season, while violating chapter 810
Delete lines 740 - 814.
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And the title is amended as follows:

Delete lines 3 - 4

and insert:

Commission; amending s. 379.2223, F.S.;

Delete lines 85 - 86

and insert:

providing an
Appropriations Subcommittee on General Government (Dean) recommended the following:

Senate Amendment (with title amendment)

Between lines 147 and 148 insert:

Section 5. Paragraphs (d) and (e) of subsection (1) of section 379.2431, Florida Statutes, are amended to read:

379.2431 Marine animals; regulation.—
(1) PROTECTION OF MARINE TURTLES.—
(d) Except as authorized in this paragraph, or unless otherwise provided by the Federal Endangered Species Act or its
implementing regulations, a person, firm, or corporation may not:

1. Knowingly possess the eggs of any marine turtle species described in this subsection.

2. Knowingly possess, take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any marine turtle species or hatchlings, or parts thereof, turtles or the eggs or nest of any marine turtle species described in this subsection. The commission may:

1.3. The commission may issue a special permit or loan agreement to any person, firm, or corporation, to enable the holder to possess a marine turtle species or hatchling, or parts thereof, including nests or eggs, or hatchlings, for scientific, education, or exhibition purposes, or for conservation activities such as the relocation of nests, eggs, or marine turtles or hatchlings away from construction sites. Notwithstanding other provisions of law, the commission may issue such special permit or loan agreement to any properly accredited person as defined in paragraph (c) for the purposes of marine turtle conservation.

2.4. The commission shall have the authority to adopt rules pursuant to chapter 120 to prescribe terms, conditions, and restrictions for marine turtle conservation, and to permit the possession of marine turtle species or hatchlings, turtles or parts thereof, including nests or eggs.

(e)1. Any person, firm, or corporation that commits any act prohibited in paragraph (d) involving any egg of any marine turtle species described in this subsection shall pay a penalty of $100 per egg in addition to other penalties provided in this
paragraph.

2. Any person, firm, or corporation that illegally possesses 11 or fewer of any eggs of any marine turtle species described in this subsection commits a first degree misdemeanor, punishable as provided in ss. 775.082 and 775.083.

3. For a second or subsequent violation of subparagraph 2., any person, firm, or corporation that illegally possesses 11 or fewer of any eggs of any marine turtle species described in this subsection commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. Any person, firm, or corporation that illegally possesses more than 11 of any eggs of any marine turtle species described in this subsection commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

5. Any person, firm, or corporation that illegally takes, disturbs, mutilates, destroys, causes to be destroyed, transfers, sells, offers to sell, molests, or harasses any marine turtle species or hatchling, or parts thereof, or the eggs or nest of any marine turtle species as described in this subsection, commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

6. A person, firm, or corporation that illegally possesses any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in this subsection, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

7. notwithstanding s. 777.04, any person, firm, or corporation that solicits or conspires with another person, firm, or corporation, to commit an act prohibited by this
subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

8. The proceeds from the penalties assessed pursuant to this paragraph shall be deposited into the Marine Resources Conservation Trust Fund.

And the title is amended as follows:

Between lines 12 and 13 insert:

amending s. 379.2431, F.S.; prohibiting certain possession of any marine turtle species or hatchling or parts thereof; providing penalties;
A bill to be entitled
An act relating to the Fish and Wildlife Conservation Commission; amending s. 379.101, F.S.; defining the term “fish and wildlife”; amending s. 379.2223, F.S.; revising penalties for violations of commission rules relating to control and management of state game lands; amending s. 379.2257, F.S.; revising penalties for violations of commission rules relating to cooperative agreements with the United States Forest Service; amending s. 379.2425, F.S.; authorizing exceptions to the prohibition on spearfishing; specifying penalties for violating the prohibition; amending s. 379.29, F.S.; revising penalties related to the contamination of fresh waters; amending s. 379.295, F.S.; specifying penalties associated with the prohibition on the use of explosives and other substances injurious to fish; amending s. 379.33, F.S.; deleting penalty provisions associated with the general enforcement of commission rules; amending s. 379.3502, F.S.; deleting a provision regarding the alteration of licenses or permits; specifying penalties for the unlawful transfer of a license or permit; amending s. 379.3503, F.S.; specifying penalties for swearing or affirming a false statement in an application for a license or permit; amending s. 379.3504, F.S.; specifying penalties for entering false information on an application for a license or permit; amending s. 379.3511, F.S.; revising penalties for violations related to subagent sales of hunting, fishing, and trapping licenses and permits; amending s. 379.354, F.S.; specifying penalties for violations related to recreational licenses, permits, and tags; providing that the purchase of a tarpon tag does not accord the purchaser with certain rights; revising penalties related to the return of unused Convention on International Trade on Endangered Species (CITES) authorization numbers; amending s. 379.357, F.S.; providing that the purchase of a tarpon tag does not accord the purchaser with certain rights; revising penalties related to the tarpon license program; amending s. 379.359, F.S.; authorizing, rather than requiring, the commission to retain a portion of voluntary contributions for Southeastern Guide Dogs, Inc.; amending s. 379.363, F.S.; specifying penalties for violations related to freshwater fish dealer licenses; amending s. 379.364, F.S.; specifying penalties for violations related to the licensure of fur and hide dealers; amending s. 379.365, F.S.; revising penalties for violations related to stone crabs; amending s. 379.3751, F.S.; specifying penalties for violations related to the taking and possession of alligators; amending s. 379.3752, F.S.; specifying penalties for violations of requirements related to the tagging of alligators and alligator hides; amending s. 379.401, F.S.; revising the penalties associated with the violation of commission rules related to the filing of documentation; specifying penalties for the violation of commission rules or orders related to the return of unused Convention on the International Trade on Endangered Species (CITES) tags; authorizing imposition of a modified penalty for a specified offense if certain conditions are met; specifying that persons who commit certain Level One violations may be required to provide proof of a license or permit to satisfy a citation; providing...
that violations of commission rules or orders regarding all traps are Level Two violations unless otherwise specified; providing that violations of rules or orders of the commission relating certain alligator-related programs are Level Two violations; providing that certain specified unclassified violations are Level Two violations; revising the levels to which specified violations are assigned; revising penalty provisions for Level Four violations; specifying penalties for certain violations while engaged in trespass; specifying that certain fines collected for trespass violations be deposited in the State Game Trust Fund; repealing s. 379.403, F.S., relating to the illegal killing, taking, possessing, or selling of wildlife or game and related fines; amending s. 379.409, F.S.; revising penalties for the illegal killing, possessing, or capturing of alligators or other crocodilia or crocodilian eggs; amending s. 379.411, F.S.; revising penalties for the unlawful intentional killing or wounding of any species designated as endangered, threatened, or of special concern; amending s. 379.4115, F.S.; revising penalties for the killing of Florida or wild panthers; amending ss. 379.3004, 379.337, 589.19, and 810.09, F.S.; conforming cross-references; providing an effective date.

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

CODING: Words stricken are deletions; words underlined are additions.
Section 5. Subsection (2) of section 379.29, Florida Statutes, is amended to read:

379.29 Contaminating fresh waters.—

(2) A person, firm, or corporation violating any of the provisions of this section commits a Level Two violation under s. 379.401, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 for the first offense, and for the second or subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. Section 379.295, Florida Statutes, is amended to read:

379.295 Use of explosives and other substances prohibited.—

No person may throw or place, or cause to be thrown or placed, any dynamite, lyddite, gunpowder, cannon cracker, acids, filtration discharge, debris from mines, Indian berries, sawdust, green walnuts, walnut leaves, creosote, oil, or other explosives or deleterious substance or force into the fresh waters of this state whereby fish therein are or may be injured. Nothing in this section may be construed as preventing the release of water slightly discolored by mining operations or water escaping from such operations as the result of providential causes. A person who violates this section commits a Level Two violation under s. 379.401.

Section 7. Section 379.33, Florida Statutes, is amended to read:

379.33 Enforcement of commission rules; penalties for violation of rules.—Rules of the Fish and Wildlife Conservation Commission shall be enforced by any law enforcement officer certified pursuant to s. 943.13. Except as provided under...
An person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.401(1).

Section 8. Section 379.3502, Florida Statutes, is amended to read:

379.3502 License and permit not transferable.—A person may not alter or change in any manner, or loan or transfer to another, unless otherwise provided, any license or permit issued pursuant to the provisions of this chapter, and such license or permit may be used only by the person to whom it is issued. A person who violates this section commits a Level Two violation under s. 379.401.

Section 9. Section 379.3503, Florida Statutes, is amended to read:

379.3503 False statement in application for license or permit.—A person who swears or affirms to any false statement in any application for license or permit provided by this chapter commits a Level Two violation under s. 379.401, as guilty of violating this chapter, and shall be subject to the penalty provided in s. 379.401, and any false statement contained in any application for such license or permit renders the license or permit void.

Section 10. Section 379.3504, Florida Statutes, is amended to read:

379.3504 Entering false information on licenses or permits.—Whoever knowingly and willfully enters false information on, or allows or causes false information to be entered on or shown upon any license or permit issued under the provisions of this chapter in order to avoid prosecution, or to assist another in avoiding to avoid prosecution, or for any other wrongful purpose commits a Level Two violation under s. 379.401.

Section 11. Paragraphs (d), (e), and (f) of subsection (4) of section 379.3511, Florida Statutes, are amended, and a new subsection (4) is added to that section, to read:

379.3511 Appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits.—

(1) Subagents shall serve at the pleasure of the commission. The commission may establish, by rule, procedures for the selection and appointment of subagents. The following are requirements for subagents so appointed:

(d) Any person who willfully violates any of the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(e) A subagent may charge and receive as his or her compensation 50 cents for each license or permit sold. This charge is in addition to the sum required by law to be collected for the sale and issuance of each license or permit. This charge does not apply to the shoreline fishing license; however, for each shoreline fishing license issued, the subagent may retain 50 cents from other license proceeds otherwise due the commission.

(f) A subagent shall submit payment for and report the sale of licenses and permits to the commission as prescribed by the commission.

(4) A person who willfully violates this section commits a Level Two violation under s. 379.401.
5-00724A-16

Section 12. Subsection (18) is added to section 379.354, Florida Statutes, to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(18) PENALTY.—Unless otherwise provided, a person who violates this section commits a Level One violation under s. 379.401.

Section 13. Subsections (3) through (7) of section 379.357, Florida Statutes, are amended to read:

379.357 Fish and Wildlife Conservation Commission license program for tarpon; fees; penalties.—

(3) An individual may not take, kill, or possess any fish of the species Megalops atlanticus, commonly known as tarpon, unless the individual has purchased a tarpon tag and securely attached it through the lower jaw of the fish.

(4) Any individual, including a taxidermist who possesses a tarpon which does not have a tag securely attached as required by this section commits a Level Two violation under s. 379.401. Provided, however, A taxidermist may remove the tag during the process of mounting a tarpon, but the tag must remain with the fish during any subsequent storage or shipment. Purchase of a tarpon tag does not give the purchaser any right to harvest or possess tarpon in contravention of commission rule. A person who violates this subsection commits a Level Two violation under s. 379.401.

(5) An individual who immediately returns a tarpon, unharmed, to the water at the place where the fish was caught.

(6) The provisions of this section do not apply to a person who immediately returns a tarpon, unharmed, to the water at the place where the fish was caught.

Section 14. Section 379.359, Florida Statutes, is amended to read:

379.359 License application provision for voluntary contribution to Southeastern Guide Dogs, Inc.—The application for any license for recreational activities issued under this part must include a check-off provision that permits the applicant for licensure to make a voluntary contribution of $2. The Fish and Wildlife Conservation Commission shall retain up to 90 cents from each contribution to cover administrative costs. The remainder shall be distributed quarterly by the Fish and Wildlife Conservation Commission to Southeastern Guide Dogs, Inc., located in Palmetto. Southeastern Guide Dogs, Inc., shall use the contributions to breed, raise, and train guide dogs for the blind, specifically for the “Paws for Patriots” program, including in-residence training for veterans who are provided guide dogs by Southeastern Guide Dogs, Inc.

Section 15. Subsection (4) is added to section 379.363, Florida Statutes, to read:

379.363 Freshwater fish dealer’s license.—
(4) A person who violates this section commits a Level Two violation under s. 379.401.

Section 16. Subsection (5) is added to section 379.364, Florida Statutes, to read:

379.364 License required for fur and hide dealers.—

(5) A person who violates this section commits a Level Two violation under s. 379.401.

Section 17. Paragraph (a) of subsection (2) of section 379.365, Florida Statutes, is amended to read:

379.365 Stone crab; regulation.—

(2) PENALTIES.—For purposes of this subsection, conviction is any disposition other than acquittal or dismissal, regardless of whether the violation was adjudicated under any state or federal law.

(a) It is unlawful to violate commission rules regulating stone crab trap certificates and trap tags. A person may not use an expired tag or a stone crab trap tag not issued by the commission or possess or use a stone crab trap in or on state waters or adjacent federal waters without having a trap tag required by the commission firmly attached to the trap thereon.

In addition to any other penalties provided in s. 379.407, the following administrative penalties apply to any commercial harvester who violates this paragraph:

1. For a first violation, the commission shall assess an administrative penalty of up to $1,000.

2. For a second violation that occurs within 24 months of any previous such violation, the commission shall assess an administrative penalty of up to $2,000 and the stone crab endorsement holder’s saltwater products license in accordance with s. 379.407.

3. For a third violation that occurs within 24 months of any previous two such violations, the commission shall assess an administrative penalty of up to $5,000 and the stone crab endorsement holder’s saltwater products license in accordance with s. 379.407.

4. For a fourth violation that occurs within 48 months of any three previous such violations, the commission shall result in permanent revocation of all of the violator’s saltwater fishing privileges, including having the commission proceed against the endorsement holder’s saltwater products license in accordance with s. 379.407.

A person who violates this section commits a Level Two violation under s. 379.401.
Section 19. Subsection (3) is added to section 379.3752, Florida Statutes, to read:

379.3752 Required tagging of alligators and hides; fees; revenues.—The tags provided in this section shall be required in addition to any license required under s. 379.3751.

(3) A person who violates this section commits a Level Two violation under s. 379.401.

Section 20. Section 379.401, Florida Statutes, is amended to read:

379.401 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.—

(1) (a) LEVEL ONE VIOLATIONS.—A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who hold any recreational licenses and permits or any alligator licenses and permits issued by the commission.

2. Rules or orders of the commission relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission.

3. Rules or orders of the commission relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.

4. Rules or orders of the commission relating to vessel size or specifying motor restrictions on specified water bodies.

5. Rules or orders of the commission requiring the return of unused Convention on the International Trade on Endangered Species (CITES) tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.

6. Section 379.354(1)-(15), providing for recreational licenses to hunt, fish, and trap.

7. Section 379.3581, providing hunter safety course requirements.

8. Section 379.3003, prohibiting deer hunting unless required clothing is worn.

(b) A person who commits a Level One violation commits a noncriminal infraction and shall be cited to appear before the county court.

(c) 1. The civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354 is $50 plus the cost of the license or permit, unless subparagraph 2. applies. Alternatively, a person who violates the license and permit requirements of s. 379.354 and who is subject to the penalties imposed by this subparagraph, except a person who violates s. 379.354(6), (7), (8)(f), or (8)(h), may purchase the license or permit and shall provide proof of such license or permit and pay a civil penalty of $50.

2. The civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354 is $250 plus the cost of the license or permit if the person cited has previously committed the same Level One violation within the preceding 36 months. Alternatively, a person who violates the license and permit requirements of s. 379.354 and who is subject to the penalties imposed by this subparagraph,
(h) A person who elects to, or is required to, appear before the county court as required commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(i) A person cited for violating the requirements of s. 379.354 relating to personal possession of a license or permit may not be convicted if, prior to or at the time of a county court hearing, he or she produces the required license or permit for verification by the hearing officer or the court clerk. The license or permit must have been valid at the time the person was cited. The clerk or hearing officer may assess a $10 fee for costs under this paragraph.

LEVEL TWO VIOLATIONS.—A person commits a Level Two violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.

2. Rules or orders of the commission establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.

3. Rules or orders of the commission prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
4. Rules or orders of the commission relating to the feeding of saltwater fish.
5. Rules or orders of the commission relating to landing requirements for freshwater fish or saltwater fish.
6. Rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
7. Rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals.
8. Rules or orders of the commission relating to the use of dogs for the taking of wildlife.
9. Rules or orders of the commission which are not otherwise classified.
10. Rules or orders of the commission prohibiting the unlawful use of finfish traps, unless otherwise provided by law.
11. Rules or orders of the commission which require the maintenance of records relating to alligators.
12. Rules or orders of the commission requiring the return of unused CITES tags issued under an alligator management program other than the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program.
13. All requirements or prohibitions in this chapter which are not otherwise classified.
14. Section 379.23, prohibiting the violation of or noncompliance with commission rules.
15. Section 379.407(2), prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.
16. Section 379.2421, relating to fishers and equipment, unless otherwise provided in that section prohibiting the
28. **Section 379.3671(2)(c), excluding subparagraph 5.**, prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of spiny lobster trap contents or trap gear, unless otherwise provided in that section.

29. **Section 379.3751**, relating to required licenses for the taking and possession of alligators.

30. **Section 379.3752**, relating to required tagging of alligators and hides.

(b)1. A person who commits a Level Two violation but who has not been convicted of a Level Two or higher violation within the past 3 years commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. Unless the stricter penalties in subparagraph 3. or subparagraph 4. apply, a person who commits a Level Two violation with 3 years after a previous conviction for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $250.

3. Unless the stricter penalties in subparagraph 4. apply, a person who commits a Level Two violation within 5 years after two previous convictions for a Level Two or higher violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $500 and a suspension of any recreational license or permit issued under s. 379.354 for 3 years. Such suspension shall include the suspension of the privilege to exercise any privilege granted under any exemption in s. 379.353.

4. A person who commits a Level Two violation within 10 years after three previous convictions for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $750 and a suspension of any recreational license or permit issued under s. 379.354 for 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under s. 379.353. If the recreational license or permit being suspended was an annual license or permit, any privileges under ss. 379.353 and 379.354 may not be acquired for a 3-year period following the date of the violation.

(3) **LEVEL THREE VIOLATIONS.** A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission prohibiting the sale of saltwater fish.

2. Rules or orders of the commission prohibiting the illegal importation or possession of exotic marine plants or animals.

3. **Section 379.407(2), establishing major violations,** unless otherwise provided in that section.

4. **Section 379.407(4), prohibiting the possession of certain finfish in excess of recreational daily bag limits,**
5. Section 379.28, prohibiting the importation of freshwater fish.
6. Section 379.354(17), prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
7. Section 379.3014, prohibiting the illegal sale or possession of alligators.
8. Section 379.357(4), prohibiting the sale, transfer, or purchase of tarpon.
9. Section 379.404(1), (3), and (6), prohibiting the illegal taking and possession of deer and wild turkey.
10. Section 379.406, prohibiting the possession and transportation of commercial quantities of freshwater game fish.
   (b)1. A person who commits a Level Three violation but who has not been convicted of a Level Three or higher violation within the past 10 years commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
2. A person who commits a Level Three violation within 10 years after a previous conviction for a Level Three or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of $750 and a suspension of any recreational license or permit issued under s. 379.354 for the remainder of the period for which the license or permit was issued up to 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the ability to exercise any privilege granted under s. 379.353. If the recreational license or permit being suspended was an annual license or permit, any privileges under ss. 379.353 and 379.354 may not be acquired for a 3-year period following the date of the violation.
3. A person who commits a violation of s. 379.354(17) shall receive a mandatory fine of $1,000. Any privileges under ss. 379.353 and 379.354 may not be acquired for a 5-year period following the date of the violation.
4. (a) LEVEL FOUR VIOLATIONS.—A person commits a Level Four violation if he or she violates any of the following provisions:
   1. Section 379.354(16), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license, or possession of a recreational license without authorization from the commission.
   2. Section 379.365(2)(c), prohibiting criminal activities relating to the taking of stone crabs, unless otherwise provided in that section.
   3. Section 379.366(4)(c), prohibiting criminal activities relating to the taking and harvesting of blue crabs, unless otherwise provided in that section.
   4. Section 379.367(4), prohibiting the willful molestation of spiny lobster gear, unless otherwise specified in that section.
   5. Section 379.367(4)(a), prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates, unless otherwise specified in that section.
5. Section 379.367(4)(a), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.
6. Section 379.404(5), prohibiting the sale of illegally-taken deer or wild turkey.
7. Section 379.405, prohibiting the molestation or theft of freshwater fishing gear.
8. Section 379.409, prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilians or their eggs.
9. Section 379.411, prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
10. Section 379.4115, prohibiting the killing of any Florida or wild panther.

(b) A person who commits a Level Four violation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) ILLEGAL ACTIVITIES WHILE COMMITTING BURGLARY OR TRESPASS.—In addition to any other penalty provided by law, a person who violates the criminal provisions of this chapter or the rules or orders of the commission by illegally killing, taking, possessing, or selling fish and wildlife as defined in s. 379.101, in or out of season, while violating chapter 810 shall pay a fine of $500 for each such violation, plus court costs and any restitution ordered by the court. All fines collected under this subsection shall be remitted by the clerk of the court to the Department of Revenue to be deposited into the State Game Trust Fund of the Fish and Wildlife Conservation Commission.

(6) VIOLATIONS OF CHAPTER.—Except as provided in this chapter:

(a) A person who commits a violation of any provision of this chapter, for the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) A person who is convicted of a second or subsequent violation of any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) SUSPENSION OR FORFEITURE OF LICENSE.—The court may order the suspension or forfeiture of any license or permit issued under this chapter to a person who is found guilty of committing a violation of this chapter.

(7) CONVICTION DEFINED.—As used in this section, the term "conviction" means any judicial disposition other than acquittal or dismissal.

Section 21. Section 379.403, Florida Statutes, is repealed.

Section 22. Subsection (1) of section 379.409, Florida Statutes, is amended, and subsection (4) is added to that section, to read: 379.409 Illegal killing, possessing, or capturing of alligators or other crocodilians or their eggs; confiscation of equipment.—

(1) It is unlawful to intentionally kill, injure, possess, or capture, or attempt to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian, unless authorized by the rules of the Fish and Wildlife Conservation Commission. Any person who violates this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
in addition to such other punishment as may be provided by law.

Any equipment, including but not limited to weapons, vehicles, boats, and lines, used by a person in the commission of a violation of any law, rule, regulation, or order relating to alligators or other crocodilia or the eggs of alligators or other crocodilia shall, upon conviction of such person, be confiscated by the Fish and Wildlife Conservation Commission and disposed of according to rules, orders, and regulations of the commission. The arresting officer shall promptly make a return of the seizure, describing in detail the property seized and the facts and circumstances under which it was seized, including the names of all persons known to the officer who have an interest in the property.

(4) A person who violates this section commits a Level Four violation under s. 379.401, in addition to such other punishment as may be provided by law.

Section 23. Section 379.411, Florida Statutes, is amended to read:

379.411 Intentional killing or wounding of any species designated as endangered, threatened, or of special concern; criminal penalties.—It is unlawful for a person to intentionally kill or wound any fish or wildlife of a species designated by the Fish and Wildlife Conservation Commission as endangered, threatened, or of special concern, or to intentionally destroy the eggs or nest of any such fish or wildlife, except as provided for in the rules of the commission. A person who violates this section commits a Level Four violation under s. 379.401, and the term "written authorization" means a card, letter, or other written instrument which shall include, but need not be limited to, the name of the owner or his or her authorized representative to be on the land for the purpose of hunting. The written authorization shall be presented on demand to any law enforcement officer, the owner, or the authorized agent of the owner.

(a) For purposes of this section, the term "hunting" means to be engaged in or reasonably equipped to engage in the pursuit or taking by any means of any animal described in s. 379.101(20) or (21) or s. 379.111(12) or (14), and the term "written authorization" means a card, letter, or other written instrument which shall include, but need not be limited to, the name of the owner or his or her authorized representative to be on the land for the purpose of hunting.
Section 26. Paragraph (d) of subsection (5) of section 379.337, Florida Statutes, is amended to read:

379.337 Confiscation, seizure, and forfeiture of property and products.—
(5) CONFISCATION AND SALE OF PERISHABLE SALTWATER PRODUCTS;
PROCEDURE.—
(d) For purposes of confiscation under this subsection, the term "saltwater products" has the meaning specified set out in s. 379.101(37) or 379.101(38), except that the term does not include saltwater products harvested under the authority of a recreational license unless the amount of such harvested products exceeds three times the applicable recreational bag limit for trout, snook, or redfish.

Section 27. Paragraph (b) of subsection (4) of section 589.19, Florida Statutes, is amended to read:

589.19 Creation of certain state forests; naming of certain state forests; Operation Outdoor Freedom Program.—
(4) (b) Participation in the Operation Outdoor Freedom Program is limited to Florida residents, as defined in s. 379.101(31) or 379.101(32), who:
1. Are honorably discharged military veterans certified by the United States Department of Veterans Affairs or its predecessor or by any branch of the United States Armed Forces to be at least 30 percent permanently service-connected disabled;
2. Have been awarded the Military Order of the Purple Heart; or
3. Are active duty servicemembers with a service-connected injury as determined by his or her branch of the United States Armed Forces.

Section 28. Paragraph (h) of subsection (2) of section 810.09, Florida Statutes, is amended to read:

810.09 Trespass on property other than structure or conveyance.—
(2) (h) Any person who in taking or attempting to take any animal described in s. 379.101(20) or (21) or 379.101(13) or 422, or in killing, attempting to kill, or endangering any animal described in s. 585.01(13) knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits trespass, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term "potentially lethal projectile" includes any projectile launched from any firearm, bow, crossbow, or similar tensile device. This section does not apply to any governmental agent or employee acting within the scope of his or her official duties.

Section 29. This act shall take effect July 1, 2016.
THE FLORIDA SENATE
APPEARANCE RECORD

Feb. 11 2016
Meeting Date

Bill Number (if applicable)
SB 1282

Amendment Barcode (if applicable)
436274

Topic Amendment to FWC agency bill

Name Jackie Fauls

Job Title Legislative Affairs Director

Address 620 S. Meridian Street
Tallahassee, FL 32399
City State Zip

Phone 850-487-3795
Email jackie.fauls@myfwc.com

Speaking: [] For [] Against [] Information
Waive Speaking: [] In Support [] Against
(The Chair will read this information into the record.)

Representing Fish & Wildlife Conservation Commission

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.
Feb. 11, 2016

Meeting Date

Topic Amendment to FWC agency bill

Bill Number (if applicable) SB 1282

Name Jackie Fauls

Amendment Barcode (if applicable) 833622

Job Title Legislative Affairs Director

Representing Fish & Wildlife Conservation Commission

Address 620 S. Meridian Street

Speaking: ☐ For ☐ Against ☐ Information

Tallahassee, FL 32399

Waive Speaking: ☑ In Support ☐ Against

City State Zip

(If Chair will read this information into the record.)

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Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: Jul 11, 2016

Bill Number (if applicable): SB 1282

Amendment Barcode (if applicable):

Topic: FWC Agency Bill

Name: Jackie Fauls

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing: Fish & Wildlife Conservation Commission

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.
January 20, 2016

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

Dear Chairman Hays,

I respectfully request you place Senate Bill 1282, relating to the Fish and Wildlife Conservation Commission, on your Appropriations Subcommittee on General Government agenda at your earliest convenience.

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

Sincerely,

Charles S. Dean
State Senator District 5

cc: Jamie DeLoach, Staff Director
The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: SB 1300
INTRODUCER: Senator Dean
SUBJECT: At-risk Vessels
DATE: February 10, 2016

I. Summary:

SB 1300 addresses vessels that may become derelict. The bill:
- Makes it unlawful for a vessel owner to anchor on, moor on, or occupy the waters of the state when that vessel is at risk of becoming derelict;
- Provides conditions under which a vessel may be considered at risk of becoming derelict;
- Provides civil penalties for vessel owners whose vessels are determined to be at risk of becoming derelict;
- Provides an exemption for vessels that are moored to a private dock or wet slip with the consent of the owner for the purpose of being repaired; and
- Provides that violations may be enforced by a uniform boating citation mailed to the registered owner of the vessel.

The bill will have an insignificant, positive fiscal impact on state funds.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Derelict Vessels

Derelict vessels are vessels\(^1\) that are left, stored, or abandoned:
- In a wrecked, junked, or substantially dismantled condition upon any public waters of this state;

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\(^1\) Section 327.02, F.S., defines vessel as synonymous with boat as referenced in Fla. Const. art. VII, s.1(b) (1968), and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water. Fla. Const. art. VII, s.1(b) (1968) provides, “motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.”
• At a port in this state without the consent of the agency having jurisdiction thereof; or
• Docked, grounded, or beached upon the property of another without the consent of the owner of the property. 2

**Removal of Derelict Vessels**

Section 327.70, F.S., provides that enforcement of chapters 327 and 328, F.S., which concern vessel safety and vessel title certificates, liens, and registration, may be enforced by the Division of Law Enforcement of Florida Fish and Wildlife Conservation Commission (FWC) and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S. 3 Section 327.44, F.S., provides authorization for the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. Additionally, s. 823.11, F.S., provides authorization for the relocation or removal of a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.

Costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until those costs are paid. 4

**Punishment for Violations of Derelict Vessel Provisions**

It is unlawful to store, leave, or abandon a derelict vessel in Florida. 5 Those who are found in violation of this provision commit a first degree misdemeanor, punishable by a term of imprisonment of no more than one year 6 and a fine of up to $1,000. 7 Additionally, s. 376.16, F.S., provides that violations of certain provisions, including violations of derelict vessel laws, may be punishable by a civil penalty of up to $50,000 per violation per day. 8 Each day during any portion of which the violation occurs constitutes a separate offense. 9

Fines and fees assessed for noncriminal infractions under s. 327.73, F.S., such as operation of an unregistered or unnumbered vessel, careless operation, and violations of navigation rules are deposited into the Marine Resources Conservation Trust Fund within the FWC for boating safety

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2 Section 823.11(1)(b), F.S.
3 Section 943.10, F.S. defines law enforcement officer as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.
4 Section 705.103(4), F.S.
5 Section 823.11(2), F.S.
6 Section 775.082(4)(a), F.S.
7 Section 775.083(1)(d), F.S.
8 Section 376.16(1), F.S.
9 Id.
education purposes. If a person fails to appear or otherwise properly respond to a uniform boating citation, that person will also be charged with the offense of failing to respond to the citation and, upon conviction, be found guilty of a second degree misdemeanor, punishable by a term of imprisonment of no more than 60 days and a fine of no more than $500.

**Costs of Removal of Derelict Vessels**

According to the FWC, removal costs of derelict vessels are approximately $350 to $450 per foot of vessel length. However, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at a much lower cost. Relocation may cost nothing if a law enforcement officer is able to tow it to a suitable location. Costs for professional towing services are approximately $200 per hour.

The FWC maintains a statewide database of vessels investigated by a law enforcement officer and deemed to be either derelict or at risk of becoming derelict, although the database related to at-risk vessels is largely incomplete. This is due to the fact that the current effort related to at-risk vessels is a voluntary community-oriented policing effort. The FWC estimates that 166 derelict vessels were removed in 2014 by local governments. Approximately $665,500 was spent by local governments on the removal of those vessels, which is an average removal cost of $4,006 per vessel.

Due to the problem of derelict vessels and the costs of removing them, the FWC held six public meetings in 2015 to engage the public on various solutions. Boat owners, boating organizations, marine industries, and local governments participated in the meetings. Participants were asked to respond to a survey to indicate their levels of support for eight concepts addressing derelict vessels. The concept of prohibiting vessels deemed “at risk” of becoming derelict received the most support from those surveyed, with 85.2 percent of survey respondents indicating they either “support” or “highly support” the concept.

**Local Government Authority**

Local governments are only authorized to enact and enforce regulations regarding the mooring or anchoring of vessels that are located within marked boundaries of a mooring field. The inability to regulate vessels outside of mooring fields has led to problems that include:

- The locations where anchored vessels accumulate;
- Unattended vessels;

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10 Section 327.73(8), F.S.
11 Section 327.73(1), F.S.
12 Section 775.082(4)(b), F.S.
13 Section 775.083(1)(e), F.S.
15 *Id.* Immediate removal of a derelict vessel was a concept that received support among eight proposals for dealing with the problem of derelict vessels.
16 *Id.*
17 *Id.*
18 *Id.*
19 *Id.*
20 Section 327.60, F.S.
• Anchored vessels which are dragging anchor or not showing proper lighting;
• Vessels which are not maintained properly; and
• Vessels which become derelict.21

III. Effect of Proposed Changes:

Section 1 creates s. 327.4107, F.S., to provide that vessels at risk of becoming derelict may not anchor on, moor on, or occupy the waters of the state.

The bill provides that an officer of the FWC or of any other law enforcement agency specified in s. 327.70, F.S., may determine that a vessel is at risk of becoming derelict if any of the following conditions exist:
• The vessel is taking on, or has taken on, water without an effective means to dewater;
• Spaces on the vessel which are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
• The vessel has broken loose or is in danger of breaking loose from its anchor; and
• The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunken or partially sunken.

The bill provides that a person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy such waters commits a noncriminal infraction, punishable by a civil penalty as provided in s. 327.73, F.S., which is added in section 3 of the bill. The civil penalties are in addition to any other penalties provided for in law.

The bill provides an exemption for vessels that are moored to a private dock or wet slip with the consent of the owner for the purpose of being repaired.

Section 2 amends s. 327.70, F.S., to provide that violations of s. 327.4107, F.S., may be enforced by a uniform boating citation mailed to the registered owner of the vessel.

Section 3 amends s. 327.73, F.S., to provide the following civil penalties for violations of s. 327.4107, F.S. The civil penalties are:
• For a first offense: $50;
• For a second offense occurring 30 days or more after a first offense: $100; and
• For a third or subsequent offense occurring 30 days or more after a previous offense: $250.

The civil penalties are remitted by the clerk of court to the Department of Revenue and deposited into the Marine Resources Conservation Trust fund for boating and education purposes.22

Section 4 of the bill provides an effective date of July 1, 2016.

22 Section 327.73(8), F.S.
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:
   SB 1300 may have a negative but indeterminate effect on boat owners due to new penalties imposed on vessel owners whose vessels are found to be in danger of becoming derelict. These effects are not anticipated to be significant.23

C. Government Sector Impact:
   The bill may have a positive but indeterminate impact on local and state governments if individuals repair or move their vessels rather than allow them to become derelict.

   A positive but indeterminate fiscal impact may result from the penalties imposed for violations of the provisions of the bill. According to the FWC, these effects are not anticipated to be significant.24

   The proposed Senate General Appropriations Bill for the 2016-2017 fiscal year, SB 2500, includes $1,500,000 from the General Revenue Fund for removal of derelict vessels.

VI. Technical Deficiencies:

   None.

VII. Related Issues:

   None.

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23 FWC, House Bill 7025 Agency Analysis (Jan. 6, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

24 Id.
VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.70 and 327.73.

This bill creates the following section of the Florida Statutes: 327.4107.

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.

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

A bill to be entitled
An act relating to at-risk vessels; creating s. 327.4107, F.S.; prohibiting a vessel that is at risk of becoming derelict from anchoring on, mooring on, or occupying the waters of this state; authorizing an officer of the Fish and Wildlife Conservation Commission or of specified law enforcement agencies to determine that a vessel is at risk of becoming derelict if certain conditions exist; providing that a person who anchors or moors such a vessel or allows it to occupy waters of this state commits a noncriminal infraction; providing penalties; providing applicability; amending s. 327.70, F.S.; providing for enforcement of such violations by citation mailed to the owner of the vessel; amending s. 327.73, F.S.; providing civil penalties for such violations; providing an effective date.

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

Section 1. Section 327.33(3)(b), relating to navigation rules, is created to read:

327.4107 Vessels at risk of becoming derelict on waters of this state.—

(1) To prevent vessels in neglected or deteriorating condition from reaching a likely and foreseeable state of disrepair, a vessel that is at risk of becoming derelict pursuant to subsection (2) may not anchor on, moor on, or occupy the waters of this state.

(2) An officer of the commission or of a law enforcement agency specified in s. 327.70 may determine that a vessel is at risk of becoming derelict if any of the following conditions exist:

(a) The vessel is taking on, or has taken on, water without an effective means to dewater.

(b) Spaces on the vessel which are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.

(c) The vessel has broken loose or is in danger of breaking loose from its anchor.

(d) The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunken or partially sunken.

(2) A person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy such waters commits a noncriminal infraction, punishable as provided in s. 327.73.

(4) The penalty under this section is in addition to other penalties provided by law.

(5) This section does not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs.

Section 2. Paragraph (a) of subsection (2) of section 327.70, Florida Statutes, is amended to read:

327.70 Enforcement of this chapter and chapter 328.—

(2)(a) Noncriminal violations of the following statutes may be enforced by a uniform boating citation mailed to the registered owner of an unattended vessel anchored, aground, or moored on the waters of this state:

1. Section 327.33(3)(b), relating to navigation rules.
2. Section 327.4107, relating to vessels at risk of becoming derelict.

3. Section 327.44, relating to interference with navigation.

4. Section 327.50(2), relating to required lights and shapes.

5. Section 327.53, relating to marine sanitation.

6. Section 328.48(5), relating to display of decal.

7. Section 328.52(2), relating to display of number.

Section 3. Paragraph (y) is added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—
(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:
(y) Section 327.4107, relating to vessels at risk of becoming derelict on waters of this state, for which the civil penalty is:
1. For a first offense, $50.
2. For a second offense occurring 30 days or more after a first offense, $100.
3. For a third or subsequent offense occurring 30 days or more after a previous offense, $250.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 4. This act shall take effect July 1, 2016.
2/11/16

THE FLORIDA SENATE
APPEARANCE RECORD
(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

1300

Bill Number (if applicable)

AT RISK VESSELS

Topic

STEPHEN JAMES

Name

Job Title

100 S. MONROE

Address

TALLAHASSEE, FL

Street

City

State

Zip

Phone 850-922-1300

Email

Speaking: □ For □ Against □ Information

Waive Speaking: □ In Support □ Against

(Tha Chair will read this information into the record.)

Representing FLA ASSOC. OF COUNTIES

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 (10/14/14)
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic At Risk Vessels

Name Lisa Henning

Job Title Consultant

Address 242 Office Plaza Dr

Tallahassee, FL 32301

Phone 850-246-2802

Email Lisa@timminsconsulting.com

Speaking: □ For □ Against □ Information

Representing Marine Industries Association of Florida

Appearing at request of Chair: □ Yes □ No

Waive Speaking: □ In Support □ Against

(The Chair will read this information into the record.)

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 (10/14/14)
The Florida Senate

Appearance Record

(2-11-14)

Meeting Date

Topic: At Risk Vessels

Name: Rebecca O'Hara

Job Title:

Address: 433 N Magnolia

Phone: 339-6211

Email: rao@themagnolialaw.com

City: Tallahassee

State: FL

Zip: 32301

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against

(The Chair will read this information into the record.)

Representing: Fla. League of Cities

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: 2/11/16

Bill Number (if applicable): 1300

Amendment Barcode (if applicable):

Topic: AT-RISK VESSELS

Name: DIANA PADGETT

Job Title: CONSULTANT

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TALL., FL. 32312

City: State: Zip:

Phone: 850-212-4204

Email: DIAPCONSULTING@EARTHLINK.NET

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [✓] In Support [ ] Against
(The Chair will read this information into the record.)

Representing: MARINE INDUSTRIES OF PALM BEACH COUNTY

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 (10/14/14)
January 27, 2016

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

Dear Chairman Hays,

I respectfully request you place Senate Bill 1300, relating to At-Risk Vessels, on your Appropriations Subcommittee on General Government agenda at your earliest convenience.

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

Sincerely,

Charles S. Dean
State Senator District 5

cc: Jamie DeLoach, Staff Director
I. Summary:

PCS/CS/SB 1422 revises provisions within the Insurance Code relating to solvency requirements and regulatory oversight of insurers by the Office of Insurance Regulation (OIR).

The bill implements the Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act and the Corporate Governance Annual Disclosure Model Act. The model acts originated from the National Association of Insurance Commissioners’ Solvency Modernization Initiative.

Specifically, the bill:
- Provides criteria for the OIR to exempt certain insurers and insurance groups and to provide waivers of ORSA requirements;
- Provides that the ORSA and Corporate Governance filings and related documents are privileged and not subject to subpoena or discovery directly from the OIR;
- Authorizes the OIR to retain third-party consultants to assist in its administration of the bill and specifies requirements for such third-party consultants;
- Authorizes the Financial Services Commission to adopt rules to implement the ORSA and Corporate Governance requirements; and
- Authorizes the OIR to impose sanctions for failure to submit ORSA summary reports or Corporate Governance reports.
There is an insignificant fiscal impact to the OIR that can be handled within existing resources. The bill is effective October 1, 2016, and is contingent upon SB 1416 (Public Record Exemption) becoming law.

II. Present Situation:

State Regulation of Insurance

States are the primary regulators of insurance companies. The state of domicile serves as the primary regulator for insurers. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. The OIR\(^1\) is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company,\(^2\) monitoring the financial condition of insurers through examinations and audits, and procedures for the administrative supervision,\(^3\) rehabilitation,\(^4\) or liquidation\(^5\) of an insurance company if it is in unsound financial condition or insolvent.

National Association of Insurance Commissioners Model Acts

The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. The NAIC accreditation is a certification that a state insurance regulator is fulfilling legal, financial, and organizational standards. The NAIC establishes accreditation effective dates for states to adopt in substantially similar form models and acts for purposes of NAIC accreditation review. As a member of the NAIC, the OIR is required to participate in the Financial Regulation Standards and Accreditation Program. The OIR is accredited by the NAIC. The last five-year review occurred in 2013.

In response to the 2008 financial crisis, the NAIC launched the Solvency Modernization Initiative to review existing solvency oversight tools and early warning mechanisms and identify areas of potential improvement. Two of the model acts emanating from this initiative are the ORSA Model Act and the Corporate Governance Annual Disclosure Model Act.

The ORSA Model Act

The ORSA Model Act requires insurers to conduct their own internal assessment of all reasonably foreseeable and relevant material risks (e.g., underwriting, credit, market) potentially affecting their ability to meet policyholder obligations. This information will provide regulators

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\(^1\) Section 20.121(3)(a), F.S.
\(^2\) Sections 624.411 - 624.414, F.S.
\(^3\) Administrative supervision allows the Department of Financial Services (DFS) to supervise the management of a consenting troubled insurance company in an attempt to cure the company’s troubles rather than close it down.
\(^4\) In rehabilitation, the DFS is authorized as receiver to conduct all business of the insurer in an attempt to place the insurance company back in sound financial condition.
\(^5\) In liquidation, the DFS is authorized as receiver to gather the insurance company’s assets, convert them to cash, distribute them to various claimants, and shut down the company.
with a more comprehensive view of the ability of an insurer to withstand financial stress. According to the ORSA Model Act and ORSA Guidance Manual, the ORSA has two primary goals: “to foster an effective level of Enterprise Risk Management…;” and “provide a group-level perspective on risk and capital, as a supplement to the existing legal entity view.”

The ORSA Model Act requires insurers (or an insurance group, as applicable) to:

- Maintain a risk management framework for identifying assessing, monitoring, managing and reporting on its material and relevant risks;
- Conduct an ORSA at least annually; and
- File an ORSA summary report based on the ORSA Guidance Manual with their domestic regulator or lead state (for an insurance group) beginning in 2017.

The ORSA Model Act and ORSA Guidance Manual give the insurer and insurance group flexibility with respect to the form and content of the ORSA summary report, recognizing that each insurer and insurance group’s business, strategic planning, and approach to enterprise risk management is unique. The ORSA summary reports are filed with the lead state regulator of the insurance group. Depending on the group, the OIR may or may not be the lead state regulator.

Insurers with direct premium below $500 million and an insurance group of which the insurer is a member with premium below $1 billion are exempt from the requirements of the ORSA Model Act. However, based on “unique circumstances,” the OIR may require an exempt insurer to file an ORSA summary report. The OIR may waive the filing requirement for non-exempt insurers.

The ORSA Model Act is an NAIC accreditation standard effective January 1, 2018. Thirty-four jurisdictions have adopted a substantially similar version of the ORSA Model Act. Florida has not yet adopted it in any form.

**Corporate Governance Model Act**

During full-scope, onsite financial examinations, the OIR obtains some information on insurer governance structures, processes and practices. However, these examinations are typically limited to domestic insurers and occur only once every five years. During the interval between these examinations, the OIR’s access to insurer governance practices is more limited. This can mask changes and activities having a substantial bearing on the financial condition of the insurer.

The Corporate Governance Model Act is designed to provide insurance regulators with sufficient information on insurer governance structures, practices, and processes through an annual disclosure. The Corporate Governance Model Act does not mandate any particular standards or procedures beyond those already provided under state law. The NAIC simultaneously adopted a Corporate Governance Model Regulation that delineates the contents of the annual disclosure.

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7 Office of Insurance Regulation, Senate Bill 1422 Legislative Analysis (Jan. 22, 2016) (on file with Banking and Insurance Committee).

8 Section 624.316 (2)(a), F.S., provides that the OIR may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, and shall examine each domestic insurer not less frequently than once every 5 years.
Insurers or insurer groups must file a Corporate Governance Annual Disclosure with their domestic regulator or the lead state regulator (for an insurance group) no later than June 1 of each year beginning in 2017. The key items in the Corporate Governance disclosure include:

- The insurer's corporate governance framework and structure including duties and structure of the Board of Directors and its committees;
- The policies and practices of its Board of Directors and significant committees including appointment practices, the frequency of meetings held and review procedures;
- The policies and practices directing Senior Management including a description of defined suitability standards, the insurer's code of conduct and ethics, performance evaluation and compensation practices, and succession planning; and
- The processes by which the Board of Directors, its committees and senior management ensure an appropriate level of oversight to the critical risk areas impacting the insurer's business activities including risk management processes, the actuarial function, and investment, reinsurance and business strategy decision-making processes.

The Corporate Governance Model Act is expected to become an NAIC accreditation standard. According to the NAIC, five states have adopted a version of the Corporate Governance Model Act in a substantially similar form. Florida has not adopted it.

III. Effect of Proposed Changes:

Section 1 creates s. 628.8015, F.S., which requires insurers or insurance groups (if applicable), to file an ORSA and Corporate Governance information with their domestic regulator or lead state, beginning in 2017.

Definitions

In addition to defining “corporate governance annual disclosure,” “ORSA,” “ORSA guidance manual,” and “ORSA summary report,” the bill defines the following:

- “Insurer” is defined to have the same meaning as in s. 624.03, F.S., but excludes state and federal agencies, authorities, instrumentalities, possessions, territories, or political subdivisions of a state.
- “Insurance group” is defined to mean insurers and affiliates included within an insurance holding company system.
- “Senior management” is defined to mean any corporate officer responsible for reporting information to the board of directors at regular intervals or providing information to shareholders or regulators. This includes, but is not limited to, a number of executives such as chief executive officer, chief financial officer, and chief risk officer.

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9 According to the NAIC, “The F Committee currently has out for a one year exposure the 2014 revisions to Models #305 and #306 for inclusion to the Accreditation Part A standards. The exposure period for this will end 12/31/2016. The F Committee will discuss this again at the 2017 Spring National Meeting and likely expose it for 30 days after – then consider adoption at the 2017 Summer National Meeting...if the Committee votes to adopt them into the Part A standards, the earliest it could be required for accreditation would be 1/1/19. There is a possibility the timeline could change.” NAIC correspondence (Jan. 19, 2016) (on file with Senate Committee on Banking and Insurance).

10 California, Indiana, Iowa, Louisiana, and Vermont have adopted the model act. Office of Insurance Regulation, Senate Bill 1422 Legislative Analysis (Jan. 22, 2016) (on file with Banking and Insurance Committee).

11 Section 624.03, F.S., defines “insurer” to mean every person engaged as an indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.
ORSA Provisions

The bill incorporates the three major components of the ORSA, to require insurers or insurance groups to:

- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
  - This requirement may be satisfied by being a member of an insurance group with a risk management framework applicable to the insurer’s operations;
- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group), consistent with and comparable to the process in the ORSA Guidance Manual;\(^\text{12}\)
- File an ORSA summary report, based on the ORSA Guidance Manual, with their domestic regulator or lead state (for an insurance group), beginning in 2017, which must:
  - Be submitted once every calendar year;
  - Include notification to the OIR of its proposed annual submission date by December 1, 2016; the initial ORSA summary report must be submitted by December 31, 2017;
  - Include a brief description of material changes and updates from the prior year’s report;
  - Be signed by the chief risk officer or chief executive officer responsible for overseeing the enterprise risk management process; provide copy to board of directors or appropriate board committee; and
  - Be prepared in accordance with the ORSA guidance manual and insurer must maintain and make available for OIR examination documentation and supporting information.

ORSA Exemption & Waiver

The bill exempts an insurer from the ORSA requirement if:

- Its annual direct written and unaffiliated assumed premium is less than $500 million (excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program), or
- It is a member of an insurance group with an annual direct written and unaffiliated assumed premium of $1 billion or less (excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program).\(^\text{13}\)

The bill also creates reporting obligations, contingent on the exempt status of the insurer and its insurance group. The OIR may still require an exempt insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA summary report based on certain circumstances, such as risk-based capital that triggers a company-action-level event,\(^\text{14}\)

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\(^\text{13}\) According to the OIR, two property and casualty insurer groups and five life and health insurer groups meet the ORSA threshold and have Florida as the lead state. OIR, Q&A on ORSA and CGAD (Nov. 15, 2015), on file with the Banking and Insurance Committee.

\(^\text{14}\) Section 624.81(11), F.S., authorizes the OIR to place an insurer under administrative supervision and order corrective action if the insurer is in unsound condition, exceeds its powers granted under its certificate of authority, or its practices are hazardous to the public. Commission rule defines “hazardous financial condition” in accordance with NAIC model regulation. Rule 69O-141.002, F.A.C.
exhibition of qualities of an insurer in hazardous financial condition, or if submission of the report is in the best interests of the state. In addition, the bill allows OIR to grant a waiver to an otherwise non-exempt insurer based on unique circumstances, and specifies criteria for the OIR to consider.

**Corporate Governance**

The bill requires insurers or insurer members of insurance groups (of which the OIR is the lead state regulator) to submit a Corporate Governance Annual Disclosure every June 1, with an initial disclosure to be submitted by December 31, 2018. The chief executive officer or corporate officer must sign the disclosure, and must describe the insurer or insurance group’s governance framework and structure, relevant policies and practices, and processes for overseeing critical risk areas affecting business activities.

The bill specifies that the OIR may require the submission of the annual disclosure prior to December 31, 2018:

- Based on unique circumstances including type and volume of business written, ownership and structure, and federal and international requests.
- If the insurer meets one of the standards of an insurer deemed to be in a hazardous financial condition or exhibits qualities of an insurer in hazardous financial condition.
- If the insurer is a member of an insurance group where the OIR is the lead state regulator.
- If the OIR determines that is in the best interest of the state.

The bill allows insurers and insurance groups to provide corporate governance information at the ultimate controlling parent level, the intermediate holding company level, or at the individual legal entity level. Additionally, insurers and insurance groups may make their Corporate Governance Annual Disclosure at levels at which the insurer or insurance group 1) determines risk appetite, 2) oversees or exercises coordinated supervision of earnings, capital, liquidity, operations, and reputation of the insurer, or 3) at which legal liability would be placed for failure of general corporate governance duties. The insurer or insurance group must indicate their level of reporting and explain any subsequent changes, and may meet these requirements by referring other relevant and existing documents, such as the ORSA summary report, Holding Company B or F filings, and Securities and Exchange Commission proxy statements.

Insurers and insurance groups must report subsequent changes to the Corporate Governance Annual Disclosure. The lead state may request additional information and must review the Corporate Governance Annual Disclosure in accordance with the NAIC Financial Handbook. The insurer or insurance group must maintain and make available upon examination or request by the OIR any documentation and supporting information relating to the disclosure.

**Privilege & Confidentiality of ORSA and Corporate Governance**

The bill provides that the ORSA and Corporate Governance filings and related documents that are submitted pursuant to this new provision, s. 628.8015, F.S., are privileged and not subject to subpoena or discovery directly from the OIR. The bill prohibits the OIR, or any person acting under the OIR’s authority (such as third-party consultants), from testifying as to such filings or related documents in a private civil action. However, the OIR or the Department of Financial
Services may use these filings and related documents in any regulatory or legal action it brings against an insurer as part of their official duties. The bill also provides that any applicable claims of privilege as to these filings and related documents are not waived simply because a disclosure to the OIR under this section or under any other provision of the Insurance Code. In 2014, substantially similar privilege language was enacted\(^\text{15}\) for other insurer regulatory filings, regarding insurance holding company registration statements and annual enterprise risk reports\(^\text{16}\) and annual actuarial opinions of reserves and supporting memoranda required of life insurers.\(^\text{17}\)

**Third-Party Consultants**

The bill authorizes the OIR to retain third-party consultants at the expense of the insurer or the insurance group for assisting the OIR with ORSA and Corporate Governance Annual Disclosure responsibilities. The bill requires these third-party consultants to adhere to confidentiality and conflict of interest standards through a written agreement with the OIR. In other areas of the Insurance Code, the OIR has authority to contract with independent external auditors or examiners under the following provisions.\(^\text{18}\)

**Rulemaking**

The bill authorizes the Financial Services Commission to adopt rules to administer the provisions of s. 628.8015, F.S.

**Sanctions**

Currently, s. 628.803, F.S., authorizes the OIR to impose sanctions on insurers and certain affiliated individuals of insurers for certain violations. The 2014 insurer solvency legislation authorizes the OIR to place an insurer under an order of supervision and to disapprove dividends or distributions, if the OIR finds that the insurer violated s. 628.461, F.S., (acquisition of controlling stock requirements) or s. 628.801, F.S., (insurance holding company registration statement and enterprise risk reporting requirements).\(^\text{19}\)

**Section 2** amends s. 628.803, F.S., to provide that the OIR may impose these fines for failure to submit an ORSA summary report or Corporate Governance Annual Disclosure, or may issue an order of supervision and disapprove dividends or distributions if an insurance company violates s. 628.8015, F.S., which is created by this bill. The OIR may impose a penalty of $100 per day for failure to file a report, not to exceed $10,000.

**Section 3** provides the act is repealed on October 2, 2021, unless the Legislature reauthorizes the public records exemption provided in SB 1416 or similar legislation.

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\(^{15}\) ch. 2014-101, ss. 8 and 11, Laws of Fla.

\(^{16}\) Section 628.801(4), F.S.

\(^{17}\) Section 625.1214, F.S.

\(^{18}\) Section 624.316(2)(e), F.S., the OIR general examination authority; s. 624.3161(3), F.S., the OIR market conduct examination authority; s. 624.44(1)(c), F.S., multiple-employer welfare arrangements; and s. 641.27(2), F.S., health maintenance organization examinations.

\(^{19}\) Section 628.803(4), F.S.; ch. 2014-101, s. 12, Laws of Fla.
Section 4 provides the act will take effect October 1, 2016, if SB 1416 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:
   None.

B. Public Records/Open Meetings Issues:
   None.

C. Trust Funds Restrictions:
   None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:
   None.

B. Private Sector Impact:
   Insurers may incur additional administrative costs associated with preparing and submitting the ORSA report and the Corporate Governance Annual Disclosure. However, under the provisions of the Corporate Governance Annual Disclosure, insurers and insurance groups are permitted to reference existing documents and filings. For purposes of ORSA filings, insurers are required to file the ORSA Summary reports with the lead state regulator of the insurance group, thereby avoiding regulatory redundancies associated with reporting in each state.

C. Government Sector Impact:
   According to the OIR, implementation of the bill is expected to have an insignificant impact on technology systems. The OIR can accommodate the collection of any additional information through their current system.20

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

20 Office of Insurance Regulation, Senate Bill 1422 Legislative Analysis (Jan. 22, 2016) (on file with the Senate Committee on Banking and Insurance.)
VIII. Statutes Affected:

This bill substantially amends section 628.803 of the Florida Statutes.

This bill creates section 628.8015 of the Florida Statutes.

IX. Additional Information:

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

   Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:
   - Changes the date insurers must submit the annual disclosure to December 31, 2018, from December 31, 2017.
   - Provides that the OIR may request the annual disclosure prior to December 31, 2018, under certain circumstances.
   - Provides a contingency for repeal if the public records exemption in SB 1416 or similar legislation is not reenacted prior to expiration on October 2, 2021.

   CS by Banking and Insurance on January 26, 2016:
   The CS authorizes the Financial Services Commission to adopt rules; however, the adoption of such rules would be subject to the rule ratification provisions of s. 120.541(3), F.S. The CS also provides technical, conforming changes.

B. Amendments:

   None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
Appropriations Subcommittee on General Government (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 202 - 208 and insert:

annual disclosure must be submitted by December 31, 2018.

b. An insurer or insurance group not required to submit a corporate governance annual disclosure under sub-subparagraph a. shall do so at the request of the office, but not more than once per calendar year. The insurer or insurance group shall notify the office of the proposed submission date within 30 days after
the request of the office.

   c. Before December 31, 2018, the office may require an insurer or insurance group to provide a corporate governance annual disclosure:

   (I) Based on unique circumstances, including, but not limited to, the type and volume of business written, the ownership and organizational structure, federal agency requests, and international supervisor requests;

   (II) If the insurer has risk-based capital for a company action level event pursuant to s. 624.4085(3), meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in rules adopted pursuant to s. 624.81(11), or exhibits qualities of an insurer in hazardous financial condition as determined by the office;

   (III) If the insurer is the member of an insurer group of which the office acts as the lead state regulator as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook; or

   (IV) If the office determines that it is in the best interest of the state.

================= T I T L E  A M E N D M E N T =================
And the title is amended as follows:

   Delete line 12 and insert:

   requiring the initial corporate governance annual disclosure to be submitted to the Office of Insurance Regulation by a specified date; authorizing the office to require an insurer or insurance group to provide a
corporate governance annual disclosure before such date under certain circumstances; specifying requirements for preparing and annually filing the corporate governance annual disclosure;
Appropriations Subcommittee on General Government (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 337 and 338 insert:

> Section 3. Section 628.8015, Florida Statutes, and the amendments made by this act to s. 628.803, Florida Statutes, are repealed on October 2, 2021, unless, before that date, the Legislature saves from repeal through reenactment the amendments to s. 624.4212, Florida Statutes, made by SB 1416 or similar legislation.
And the title is amended as follows:
Delete line 19
and insert:
penalties to conform to the act; providing for
contingent repeal of the act; providing a
Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 628.8015, Florida Statutes, is created to read:

628.8015 Own-risk and solvency assessment; corporate governance annual disclosure.—

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

(a) "Corporate governance annual disclosure" means a report filed by an insurer or insurance group in accordance with this section.

(b) "Insurance group" means insurers and affiliates or insurance group in accordance with this section.

(c) "Insurer" has the same meaning as in s. 624.03.

However, the term does not include agencies, authorities, instrumentalities, possessions, or territories of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; or agencies, authorities, instrumentalities, or political subdivisions of a state.

(d) "Own-risk and solvency assessment" or "ORSA" means an internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the business plan of an insurer or insurance group and the sufficiency of capital resources to support those risks.

(e) "ORSA guidance manual" means the own-risk and solvency assessment guidance manual developed and adopted by the National Association of Insurance Commissioners.

(f) "ORSA summary report" means a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports.

(g) "Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing information to shareholders or regulators and includes, but is not limited to, the chief executive officer, chief financial officer, chief operations officer, chief risk officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other executive performing one or more of these functions.
(2) OWN-RISK AND SOLVENCY ASSESSMENT.—

(a) Risk management framework.—An insurer shall maintain a risk management framework to assist in identifying, assessing, monitoring, managing, and reporting its material and relevant risks. An insurer may satisfy this requirement by being a member of an insurance group with a risk management framework applicable to the operations of the insurer.

(b) ORSA requirement.—Subject to paragraph (c), an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with and comparable to the process in the ORSA guidance manual. The ORSA must be conducted at least annually and whenever there have been significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

(c) ORSA summary report.—

1.a. A domestic insurer or insurer member of an insurance group of which the office is the lead state, as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook, shall:

(I) Submit an ORSA summary report to the office once every calendar year.

(II) Notify the office of its proposed annual submission date by December 1, 2016. The initial ORSA summary report must be submitted by December 31, 2017.

b. An insurer not required to submit an ORSA summary report pursuant to sub-subparagraph a. shall:

(I) Submit an ORSA summary report at the request of the office, but not more than once per calendar year.

(II) Notify the office of the proposed submission date within 30 days after the request of the office.

2. An insurer may comply with sub-subparagraph 1.a. or sub-subparagraph 1.b. by providing the most recent and substantially similar ORSA summary report submitted by the insurer, or another member of an insurance group of which the insurer is a member, to the chief insurance regulatory official of another state or the supervisor or regulator of a foreign jurisdiction. For purposes of this subparagraph, a “substantially similar” ORSA summary report is one that contains information comparable to the information described in the ORSA guidance manual as determined by the commissioner of the office. If the report is in a language other than English, it must be accompanied by an English translation.

3. The chief risk officer or chief executive officer of the insurer or insurance group responsible for overseeing the enterprise risk management process must sign the ORSA summary report attesting that, to the best of his or her knowledge and belief, the insurer or insurance group applied the enterprise risk management process described in the ORSA summary report and provided a copy of the report to the board of directors or the appropriate board committee.

4. The ORSA summary report must be prepared in accordance with the ORSA guidance manual. Documentation and supporting information must be maintained by the insurer and made available upon examination pursuant to s. 624.316 or upon the request of the office.

5. The ORSA summary report must include a brief description of material changes and updates since the prior year report.

6. The office’s review of the ORSA summary report must be...
An insurer is exempt from the requirements of this subsection if:

(a) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than $500 million; or

(b) The insurer is a member of an insurance group and the insurance group has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than $1 billion.

2. If an insurer is:

(a) Exempt under sub-subparagraph 1.a., but the insurance group of which the insurer is a member is not exempt under sub-subparagraph 1.b., the ORSA summary report must include every insurer within the insurance group. The insurer may satisfy this requirement by submitting more than one ORSA summary report for any combination of insurers if any combination of reports includes every insurer within the insurance group.

(b) Not exempt under sub-subparagraph 1.a., but the insurance group of which it is a member is exempt under sub-subparagraph 1.b., the insurer must submit to the office the ORSA summary report applicable only to that insurer.

3. The office may require an exempt insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA summary report:

(a) Based on unique circumstances, including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests;

(b) If the insurer has risk-based capital for a company action level event pursuant to s. 624.4085(3), meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in rules adopted by the commission pursuant to s. 624.81(1), or exhibits qualities of an insurer in hazardous financial condition as determined by the office; or

(c) If the office determines it is in the best interest of the state.

4. If an exempt insurer becomes disqualified for an exemption because of changes in premium as reported on the most recent annual statement of the insurer or annual statements of the insurers within the insurance group of which the insurer is a member, the insurer must comply with the requirements of this section effective 1 year after the year in which the insurer exceeded the premium thresholds.

(e) Waiver.—An insurer that does not qualify for an exemption under paragraph (d) may request a waiver from the office based upon unique circumstances. If the insurer is part of an insurance group with insurers domiciled in more than one state, the office must coordinate with the lead state and with
the other domiciliary regulators in deciding whether to grant a waiver. In deciding whether to grant a waiver, the office may consider:

1. The type and volume of business written by the insurer.
2. The ownership and organizational structure of the insurer.
3. Any other factor the office considers relevant to the insurer or insurance group of which the insurer is a member.

A waiver granted pursuant to this paragraph is valid until withdrawn by the office.

(3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

(a) Scope.—This section does not prescribe or impose corporate governance standards and internal procedures beyond those required under applicable state corporate law or limit the authority of the office, or the rights or obligations of third parties, under s. 624.316.

(b) Disclosure requirement.—

1.a. An insurer, or insurer member of an insurance group, of which the office is the lead state regulator, as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook, shall submit a corporate governance annual disclosure to the office by June 1 of each calendar year. The initial corporate governance annual disclosure must be submitted by December 31, 2017.

b. An insurer or insurance group not required to submit a corporate governance annual disclosure under sub-subparagraph 1.a. shall do so at the request of the office, but not more than once per calendar year. The insurer shall notify the office of the proposed submission date within 30 days after the request of the office.

2. The chief executive officer or corporate secretary of the insurer or the insurance group must sign the corporate governance annual disclosure attesting that, to the best of his or her knowledge and belief, the insurer has implemented the corporate governance practices and provided a copy of the disclosure to the board of directors or the appropriate board committee.

3.a. Depending on the structure of its system of corporate governance, the insurer or insurance group may provide corporate governance information at one of the following levels:

(I) The ultimate controlling parent level;
(II) An intermediate holding company level; or
(III) The individual legal entity level.

b. The insurer or insurance group may make the corporate governance annual disclosure at:

(I) The level used to determine the risk appetite of the insurer or insurance group;

(II) The level at which the earnings, capital, liquidity, operations, and reputation of the insurer are collectively overseen and the supervision of those factors is coordinated and exercised; or

(III) The level at which legal liability for failure of general corporate governance duties would be placed.

An insurer or insurance group must indicate the level of reporting used and explain any subsequent changes in the reporting level.
4. The review of the corporate governance annual disclosure and any additional requests for information shall be made through the lead state as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook.

5. An insurer or insurance group may comply with this paragraph by cross-referencing other existing relevant and applicable documents, including, but not limited to, the ORSA summary report, Holding Company Form B or F filings, Securities and Exchange Commission proxy statements, or foreign regulatory reporting requirements, if the documents contain information substantially similar to the information described in paragraph (c). The insurer or insurance group shall clearly identify and reference the specific location of the relevant and applicable information within the corporate governance annual disclosure and attach the referenced document if it has not already been filed with, or made available to, the office.

6. Each year following the initial filing of the corporate governance annual disclosure, the insurer or insurance group shall file an amended version of the previously filed corporate governance annual disclosure indicating changes that have been made. If changes have not been made in the previously filed disclosure, the insurer or insurance group should so indicate.

(c) Preparation of the corporate governance annual disclosure.—

1. The corporate governance annual disclosure must be prepared in a manner consistent with this subsection. Documentation and supporting information must be maintained and made available upon examination pursuant to s. 624.316 or upon the request of the office.

2. The corporate governance annual disclosure must be as descriptive as possible and include any attachments or example documents used in the governance process.

3. The insurer or insurance group has discretion in determining the appropriate format of the corporate governance annual disclosure in communicating the required information and responding to inquiries, provided that the corporate governance annual disclosure includes material and relevant information sufficient to enable the office to understand the corporate governance structure, policies, and practices used by the insurer or insurance group.

4. The corporate governance annual disclosure must describe the:
   a. Corporate governance framework and structure of the insurer or insurance group.
   b. Policies and practices of the most senior governing entity and significant committees.
   c. Policies and practices for directing senior management.
   d. Processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas that have an impact on the insurer’s business activities.

(4) CONFIDENTIALITY.—The filings and related documents submitted pursuant to subsections (2) and (3) are privileged and not subject to subpoena or discovery directly from the office. However, the department or office may use these filings and related documents in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the office for purposes of time-bar, recoupment, or any other statutory criterion for bringing a cause of action.
of the department or office. A waiver of any applicable claim of privilege in these filings and related documents may not occur because of a disclosure to the office under this section, because of any other provision of the Insurance Code, or because of sharing under s. 624.4212. The office or a person receiving these filings and related documents, while acting under the authority of the office, or with whom such filings and related documents are shared pursuant to s. 624.4212, is not permitted or required to testify in any private civil action concerning any such filings or related documents.

(5) USE OF THIRD-PARTY CONSULTANTS.—The office may retain third-party consultants at the expense of the insurer or insurance group for the purpose of assisting it in the performance of its regulatory responsibilities under this section, including, but not limited to, the risk management framework, the ORSA, the ORSA summary report, and the corporate governance annual disclosure. A third-party consultant must agree, in writing, to:

(a) Adhere to confidentiality standards and requirements applicable to the office governing the sharing and use of such filings and related documents.

(b) Verify to the office, with notice to the insurer, that the consultant is free of any conflict of interest.

(c) Monitor compliance with applicable confidentiality and conflict of interest standards pursuant to a system of internal procedures.

(6) RULE ADOPTION.—The commission may adopt rules to administer this section.

Section 2. Subsections (1) and (4) of section 628.803, Florida Statutes, are amended to read:

Florida Statutes, are amended to read:

628.803 Sanctions.—

(1) Any company failing, without just cause, to file any registration statement or certificate of exemption required to be filed pursuant to commission rules relating to this part or to submit an ORSA summary report or a corporate governance annual disclosure required pursuant to s. 628.8015 shall, in addition to other penalties prescribed under the Florida Insurance Code, be subject to pay a penalty of $100 for each day's delay, not to exceed a total of $10,000.

(4) If the office determines that any person violated s. 628.461, or s. 628.801, or s. 628.8015, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with part VI of chapter 624.

Section 3. This act shall take effect October 1, 2016, if SB 1416 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.
THE FLORIDA SENATE

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

Meeting Date: 2/11/14

Bill Number (if applicable): 1422

Amendment Barcode (if applicable): 

Topic: OB514

Name: Caitlin Murray

Job Title: Director of Government Affairs

Address: ____________________________

Phone: 

Email: 

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing: Office of Insurance Regulation

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 (10/14/14)
To: Senator Alan Hays, Chair
    Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 26, 2016

I respectfully request that Senate Bill 1422, relating to Insurer Regulatory Reporting, be placed on the:

☐ committee agenda at your earliest possible convenience.
☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10
The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: SB 1428
INTRODUCER: Senator Simmons
SUBJECT: State Investments
DATE: February 10, 2016

ANALYST STAFF DIRECTOR REFERENCE ACTION
1. Peacock McVaney GO Favorable
2. Loe DeLoach AGG Recommend: Favorable
3. 

I. Summary:

SB 1428 encourages the State Board of Administration (SBA) to take actions in support of the MacBride Principles in Northern Ireland. The MacBride Principles define the objectives for companies operating in Northern Ireland to provide fair employment opportunities to individuals from underrepresented religious groups in the workforce.

Specifically, the bill encourages the State Board of Administration (SBA) to determine which publicly traded companies that the Florida Retirement System Trust Fund has invested in operate in Northern Ireland. For those companies identified, the SBA is encouraged to:

- Notify the company that the SBA supports the MacBride Principles;
- Inquire regarding actions taken by the company in support of the MacBride Principles;
- Encourage a company that has not adopted the MacBride Principles to make all lawful efforts to implement similar fair employment practices; and
- Support the adoption of the MacBride Principles in exercising its proxy voting authority.

The bill provides that the SBA is not liable for, and a cause of action does not arise from, any action or inaction by the SBA in the administration of these provisions.

The SBA estimates that the costs for implementation should be minimal and covered within the existing management fee assessed on the FRS Trust Fund.

The bill provides an effective date of July 1, 2016.
II. Present Situation:

State Board of Administration

The State Board of Administration (SBA) is created in Article IV, section 4(e) of the State Constitution. The Governor, the Chief Financial Officer, and the Attorney General serve as the trustees of the SBA. The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution. The SBA provides a variety of investment services to various governmental entities at both the state and local government levels.

The SBA has responsibility to invest the funds of the Florida Retirement System (FRS) Trust Fund which holds the assets of the FRS Pension Plan and the FRS Investment Plan. The FRS is the primary retirement system for employees of the state, universities, state colleges, school boards, counties, and various other local governments in Florida. The table below shows the primary funds the SBA invests and the balances of those funds as of January 26, 2016.¹

<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Estimated Current Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida Retirement System Pension Plan</td>
<td>$136,093,884,390</td>
</tr>
<tr>
<td>Florida PRIME</td>
<td>$8,904,562,611</td>
</tr>
<tr>
<td>Florida Retirement System Investment Plan</td>
<td>$7,917,531,799</td>
</tr>
<tr>
<td>Lawton Chiles Endowment Fund</td>
<td>$568,432,757</td>
</tr>
<tr>
<td>Other SBA Mandates</td>
<td>$16,884,963,473</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$170,369,375,029</strong></td>
</tr>
</tbody>
</table>

In investing assets, the SBA is statutorily directed to follow the fiduciary standards of care set forth in the Employee Retirement Income Security Act (ERISA), subject to certain limitations.² Pursuant to section 215.444, F.S., a nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures. The SBA’s ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a “legal list” of the types of investments and the percent of the total fund that may be invested in each investment type.

Previous Restrictions on Investments in Northern Ireland

In the 2015 Legislative Session, section 121.153, F.S., relating to restrictions on investments in institutions doing business in or with Northern Ireland, was repealed.³ Section 121.153, F.S., was enacted by the Florida Legislature in 1988, and had required the SBA to determine the existence of nine types of affirmative action taken to eliminate the ethnic or religious discrimination practiced by the government of Northern Ireland, or with agencies or instrumentalities thereof.

These affirmative actions, known as the MacBride Principles,⁴ included:

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² Sections 215.44 and 215.47, F.S.
³ Chapter 2015-75, Laws of Fla.
III. **Effect of Proposed Changes:**

**Section 1** defines the term “MacBride Principles” as the objectives for companies operating in Northern Ireland to:

- Increase the representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs.
- Provide adequate security for the protection of minority employees both at the workplace and while traveling to and from work.
- Ban provocative religious or political emblems from the workplace.
- Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups.
- Provide that layoff, recall, and termination procedures should not in practice favor particular religious groupings.
- Abolish job reservations, apprenticeship restrictions, and differential employment criteria which discriminate on the basis of religion or ethnic origin.
- Develop training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees.
- Establish procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and
- Appoint senior management staff members to oversee affirmative action efforts and setting up timetables to carry out affirmative action principles.

The term “operating” is defined as actively engaging in commerce geographically in Northern Ireland through the acquisition, development, maintenance, ownership, sale, possession, lease, or operation of equipment, facilities, personnel, products, services, or personal property.
The term “publicly traded company” is defined as any business organization having equity securities listed on a national or an international exchange that is regulated by a national or an international regulatory authority.

The term “state board” is defined as the State Board of Administration.

The bill encourages the SBA to determine which publicly traded companies in which the Florida Retirement System Trust Fund is invested operate in Northern Ireland and is further encouraged to:

- Notify the publicly traded company that the state board supports the MacBride Principles;
- Inquire regarding the actions that the publicly traded company has taken in support of or furtherance of the MacBride Principles;
- Encourage a publicly traded company that has not adopted the MacBride Principles to make all lawful efforts to implement the fair employment practices embodied in the MacBride Principles; and
- Support the adoption of the MacBride Principles in exercising its proxy voting authority. For these purposes, the state board may not be a fiduciary under this section in exercising its proxy voting authority.

Also, the bill allows the SBA to utilize various sources of public information, including information provided by nonprofit organizations, research firms, international organizations, and government entities, to make the determinations.

Additionally, the bill provides that the SBA may not be held liable for, and no cause of action may arise from, any action or inaction by the SBA in administering these provisions.

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

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:

Indeterminate.

C. Government Sector Impact:

The SBA estimates that the cost for implementation should be minimal and covered within the existing management fee assessed on the FRS Trust Fund. Research services will need to be procured to determine which SBA investments in publicly traded companies have operations in or with Northern Ireland. The SBA will be required to dedicate staff time to complete the encouraged actions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 215.4702 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 215.4702, Florida Statutes, is created to read:

215.4702 Investments in publicly traded companies operating in Northern Ireland.—

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

(a) "MacBride Principles" means the objectives for companies operating in Northern Ireland to:

1. Increase the representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs.

2. Provide adequate security for the protection of minority employees both at the workplace and while traveling to and from work.

3. Ban provocative religious or political emblems from the workplace.

4. Publicly advertise all job openings and make special

   recruitment efforts to attract applicants from underrepresented religious groups.

5. Provide that layoff, recall, and termination procedures should not in practice favor particular religious groups.

6. Abolish job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin.

7. Develop training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees.

8. Establish procedures to assess, identify, and actively recruit minority employees with potential for further advancement.

9. Appoint senior management staff members to oversee affirmative action efforts and to set up timetables to carry out affirmative action principles.

(b) "Operating" means actively engaging in commerce geographically in Northern Ireland through the acquisition, development, maintenance, ownership, sale, possession, lease, or operation of equipment, facilities, personnel, products, services, or personal property.

(c) "Publicly traded company" means any business organization having equity securities listed on a national or an international exchange that is regulated by a national or an international regulatory authority.

(d) "State board" means the State Board of Administration.

(2) The state board is encouraged to determine which
publicly traded companies in which the Florida Retirement System Trust Fund is invested operate in Northern Ireland. If the state board determines that a publicly traded company meets such criteria, the state board is encouraged to:

(a) Notify the publicly traded company that the state board supports the MacBride Principles;

(b) Inquire regarding the actions that the publicly traded company has taken in support of or furtherance of the MacBride Principles;

(c) Encourage a publicly traded company that has not adopted the MacBride Principles to make all lawful efforts to implement the fair employment practices embodied in the MacBride Principles; and

(d) Support the adoption of the MacBride Principles in exercising its proxy voting authority. For these purposes, the state board may not be a fiduciary under this section in exercising its proxy voting authority.

(3) In making the determination specified in subsection (2), the state board may, to the extent it deems appropriate, rely on available public information, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(4) The state board may not be held liable for, and a cause of action does not arise from, any action or inaction by the state board in the administration of this section.

Section 2. This act shall take effect July 1, 2016.
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: 11/16

Bill Number: SB 1428

Topic: STATE INVESTMENTS

Name: JOHN KUCZWANSKI

Job Title: STATE BOARD OF ADMINISTRATION

Address: 1801 HERMITAGE BLVD

TALLAHASSEE, FL 32308

Phone: (850) 413-1254

Email: john.kuczkonwski@sbfaa.com

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against

(The Chair will read this information into the record.)

Representing: STATE BOARD OF ADMINISTRATION

Appearing at request of Chair: [ ] Yes [x] 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.
To: Senator Alan Hays, Chair
   Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: February 2, 2016

I respectfully request that Senate Bill 1428, relating to State Investments, be placed on the:

☐ committee agenda at your earliest possible convenience.
☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10
SB 1488 revises the county population thresholds for purposes of identifying the governmental entity responsible for payment of aerial photographs and nonproperty ownership maps. All photographs and maps furnished to a county that meets the population thresholds of a rural community in s. 288.0656(2)(e), F.S., shall be paid for by the Florida Department of Revenue. The bill has a significant impact on state funds.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Aerial Photography and Nonproperty Ownership Maps

The Florida Department of Revenue (department) coordinates the capture and distribution of orthoimagery of approximately one third of the state each year, according to the provisions of s. 195.022, F.S. Once every three years, the department must furnish aerial photographs and nonproperty ownership maps to the property appraisers as necessary to ensure that all real property within the state is listed on the roll. The three-year rotation breaks down as such:

- In the 2014-2015 mapping year, the following 15 counties were photographed: Volusia, Seminole, Orange, Brevard, Indian River, Okeechobee, St. Lucie, Martin, Glades, Palm Beach, Lee, Broward, Collier, Miami-Dade, and Monroe.

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2 The accepted industry standard is 6 inch resolution photography; see Department of Revenue, *Senate Bill 1488 Legislative Bill Analysis* (January 21, 2016) (on file with the Senate Committee on Community Affairs).

• In 2015-2016, the following 27 counties were or will be photographed: Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Leon, Wakulla, Jefferson, Madison, Taylor, Hamilton, Lafayette, Suwannee, Dixie, Levy, Gilchrist, Columbia, Union, and Bradford.

• In 2016-2017, the 25 following counties will be photographed: Nassau, Baker, Duval, Clay, St. Johns, Putnam, Flagler, Alachua, Marion, Citrus, Sumter, Lake, Hernando, Pasco, Pinellas, Hillsborough, Polk, Osceola, Manatee, Hardee, Highlands, Sarasota, DeSoto, Charlotte, and Hendry.

• This rotation cycle continues, with 15 counties, 27 counties, and 25 counties as the groupings.\(^4\)

Before 2008, the department provided aerial photography without charge or expense to property appraisers.\(^5\) In 2008, these costs were shifted to the county property appraisers, except in counties with a population of less than 25,000.\(^6\) However, between 2009 and 2015, funding for aerial photography in counties with a population less than 50,000 was provided via specific proviso language included in the General Appropriations Act each fiscal year.\(^7\)

III. Effect of Proposed Changes:

Section 1 amends s. 195.022, F.S., revising the county population thresholds for purposes of identifying the governmental entity responsible for payment of aerial photographs and nonproperty ownership maps. All photographs and maps furnished to a county that meets the population thresholds of a rural community in s. 288.0656(2)(e), F.S., shall be paid for by the department. In counties not meeting those thresholds, the property appraisers bear the expense.

A rural community is defined in s. 288.0656(2)(e), F.S., as:

• A county with a population of 75,000 or fewer;

• A county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer;

• A municipality within a county described above; or

• An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in s. 288.0656(2)(c), F.S., and verified by the department.

The following counties are within the definition of a rural community: Liberty, Lafayette, Franklin, Union, Glades, Hamilton, Calhoun, Gulf, Jefferson, Dixie, Gilchrist, Madison, Holmes, Taylor, Washington, Bradford, Baker, Hardee, Wakulla, DeSoto, Okeechobee, Hendry, Levy,

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\(^7\) See Chapter 2012-118, s. 6, Laws of Fla. (effective July 1, 2012).
Suwannee, Jackson, Gadsden, Walton, Columbia, Putnam, Monroe, Nassau, Highlands, and Flagler.  

Section 2 provides an effective date of July 1, 2016.

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:

SB 1488 provides a positive fiscal impact to counties that fall into the new population thresholds and a negative fiscal impact to the state.

The Department of Revenue estimates that by including the additional counties, the following amount would be needed from the General Revenue Fund:

<table>
<thead>
<tr>
<th></th>
<th>FY 2016-17</th>
<th>FY 2017-18</th>
<th>FY 2018-19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aerial Photography and Maps</td>
<td>$545,727</td>
<td>$236,886</td>
<td>$1,346,921</td>
</tr>
</tbody>
</table>

SB 2500, the Senate’s proposed 2016-2017 General Appropriations Bill, provides $258,720 in nonrecurring funds from the General Revenue Fund for aerial photography and mapping for counties with a population of 50,000 or less.

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9 Department of Revenue, *Senate Bill 1488 Legislative Bill Analysis* (February 8, 2016) (on file with the Appropriations Subcommittee on General Government).
VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 195.022 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.
By Senator Montford

A bill to be entitled

An act relating to aerial photographs and nonproperty ownership maps; amending s. 195.022, F.S.; revising the county population thresholds for purposes of identifying the governmental entity responsible for payment of aerial photographs and nonproperty ownership maps; providing an effective date.

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

Section 1. Section 195.022, Florida Statutes, is amended to read:

195.022 Forms to be prescribed by Department of Revenue.—
The Department of Revenue shall prescribe all forms to be used by property appraisers, tax collectors, clerks of the circuit court, and value adjustment boards in administering and collecting ad valorem taxes. The department shall prescribe a form for each purpose. The county officer shall reproduce forms for distribution at the expense of his or her office. A county officer may use a form other than the form prescribed by the department upon obtaining written permission from the executive director of the department; however, a county officer may not use a form if the substantive content of the form varies from the form prescribed by the department for the same or a similar purpose. If the executive director finds good cause to grant such permission he or she may do so. The county officer may continue to use the approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director. Otherwise, all such officers and their employees shall use the forms, and follow the instructions applicable to the forms, which are prescribed by the department. Upon request of any property appraiser or, in any event, at least once every 3 years, the department shall prescribe and furnish such aerial photographs and nonproperty ownership maps to the property appraisers as necessary to ensure that all real property within the state is properly listed on the roll. All photographs and maps furnished to a county that meets the population thresholds of a rural community in s. 288.0656(2)(e) counties with a population of 25,000 or fewer shall be paid for by the department as provided by law. For a county that does not meet those population thresholds counties with a population greater than 25,000, the department shall furnish such items at the property appraiser’s expense. The department may incur reasonable expenses for procuring aerial photographs and nonproperty ownership maps and may charge a fee to the respective property appraiser equal to the cost incurred. The department shall deposit such fees into the Certification Program Trust Fund created pursuant to s. 195.002. There shall be a separate account in the trust fund for the aid and assistance activity of providing aerial photographs and nonproperty ownership maps to property appraisers. The department shall use money in the fund to pay such expenses. All forms and maps and instructions relating to their use must be substantially uniform throughout the state. An officer may employ supplemental forms and maps, at the expense of his or her office, which he or she deems expedient for the purpose of administering and collecting ad valorem taxes. The forms required in ss. 193.461(3)(a) and 196.011(1) for renewal purposes must require sufficient information for the property appraiser to evaluate the changes in use since the prior year. If the property appraiser determines, in the case of a taxpayer,
that he or she has insufficient current information upon which
to approve the exemption, or if the information on the renewal
form is inadequate for him or her to evaluate the taxable status
of the property, he or she may require the resubmission of an
original application.

Section 2. This act shall take effect July 1, 2016.
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 2/11/16

Bill Number (if applicable) 1488

Amendment Barcode (if applicable)

Topic Aerial Photography

Name Loren Levy

Job Title General Counsel, Property Appraisers' Ass'n of Florida

Address 1828 Riggins Rd

Phone 850-219-0220

Email pafoe.comcast.net

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

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 (10/14/14)
February 1, 2016

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

Dear Chairman Hays:

I respectfully request that SB 1488 be scheduled for a hearing before the Senate Appropriations Subcommittee on General Committee. Senate Bill 1488 would restore funding for aerial photography for counties in rural communities.

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

William “Bill” Montford
State Senator, District 3

cc: Jamie DeLoach, Staff Director

BJM/mam
I. Summary:

CS/SB 1538 requires each state agency and authorizes the political subdivisions of the state to develop and implement a written veterans recruitment plan to establish annual goals for ensuring the full use of veterans in the agency’s or political subdivision’s workforce.

The bill requires the Department of Management Services (DMS) to annually collect and publish on its website and include in its annual workforce report statistical data for each state agency on the following:
- The number of persons who claim veterans’ preference;
- The number of persons who are hired through the veterans’ preference; and
- The number of persons who are hired as a result of the veterans’ recruitment plan.

The bill requires each veterans’ recruitment plan to apply to the same veterans and veterans’ family members that are addressed in the Florida law governing veterans’ preference in appointment and retention.

This bill has an indeterminate fiscal impact to the state. See Section V.

The effective date of the bill is October 1, 2016.
II. Present Situation:

Veteran Presence in Florida

The law defines the term “veteran” as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions, or who later received an upgraded discharge under honorable conditions.\(^1\) Currently, there are 21.8 million veterans in the United States, of which, over 1.6 million reside in Florida.\(^2\) This makes Florida the state with the third largest veteran population, behind only California and Texas.\(^3\) Approximately 299,000 of Florida’s veterans are service-disabled.\(^4\)

Florida’s overall unemployment rate for calendar year 2014 was 6.3 percent.\(^5\) The unemployment rate among Florida veterans was five percent compared to 5.3 percent nationally.\(^6\) The unemployment rate among Florida Post-9/11 era veterans averaged 4.8 percent compared to 7.2 percent nationally.\(^7\)

Veterans’ Preference in Employment

Florida law has included some form of veterans’ employment preference since 1947.\(^8\) The purpose of the veterans’ preference statute is to reward those who served their country in a time of need and to recognize the qualities and traits developed by military service.\(^9\) In 2014, the Legislature expanded Florida’s veterans’ preference in the public employment process to increase the field of persons eligible for veterans’ preference to include all veterans, Florida National Guard members, reservists, and Gold Star parents and legal guardians.\(^10\) In addition, beginning in 2014, private sector employers in Florida were authorized to establish a veterans’ preference process for honorably discharged veterans and certain spouses.\(^11\)

Currently, Florida law does not provide a policy for state agencies concerning the recruitment of employees who are veterans. However, the law specifically requires all state government entities, counties, cities, towns, villages, special taxing school districts, and special districts (government employers) to grant employment preference in hiring and retention to certain veterans, and

\(^1\) Section 1.01(14), F.S.
\(^3\) Florida Department of Veterans Affairs, Fast Facts, available at: http://floridavets.org/?page_id=50
\(^7\) Id.
\(^8\) Section 1, ch. 24201, L.O.F. (1947).
\(^9\) Yates v. Rezeau, 62 So.2d 726, 727 (Fla. 1952); Ch. 98-33, at 244, L.O.F.
\(^10\) ch. 2014-1, L.O.F.
\(^11\) Section 295.188, F.S.
family members of certain military servicemembers and veterans. All advertisements and written job announcements must include notice that veterans and eligible family members receive preference in employment and are encouraged to apply for the position.

Florida’s veterans’ preference in employment statutes does not require a government employer to hire a veteran over a more qualified non-veteran. In addition, a potential government employer is not required to pass a person who is eligible for veterans’ preference through the screening process if he or she does not meet the minimum qualifications for the position.

**Persons Eligible for Veterans’ Preference and Exceptions**
Pursuant to s. 295.07, F.S., the following persons are eligible to claim veterans’ employment preference:

- A disabled veteran who has served on active duty in any branch of the Armed Forces and who presently has an existing service-connected disability which is compensable under public laws administered by the United States Department of Veterans Affairs (DVA) or is receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the DVA and the United States Department of Defense.
- The spouse of a veteran:
  - Who has a total and permanent service-connected disability and who, because of this disability, cannot qualify for employment; or
  - Who is missing in action, captured in line of duty by a hostile force, or detained or interned in line of duty by a foreign government or power.
- A veteran of any war, who has served at least one day during that war time period as defined in subsection s. 1.01(14), F.S., or who has been awarded a campaign or expeditionary medal. (Active duty for training is not allowed for eligibility under this provision.)
- The unremarried widow or widower of a veteran who died of a service-connected disability.
- The mother, father, legal guardian, or unremarried widow or widower of a service member who died as a result of military service under combat-related conditions.
- A veteran as defined in s. 1.01(14), F.S.
- A current member of any reserve component of the U.S. Armed Forces or the Florida National Guard.

Florida law exempts the following government positions from the veterans’ preference requirements:

- Positions that are exempt from the state Career Service System, including certain legislative branch personnel, judicial branch personnel, and personnel of the Office of the Governor; however, all positions under the University Support Personnel System of the State University

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12 Section 295.07(1), F.S., requires the state and political subdivisions of the state to comply with veterans’ preference requirements. Section 1.01, F.S., defines “political subdivision” as “counties, cities, towns, villages, special tax school districts, special road and bridge districts, and all other districts in the state.
13 Section 295.065, F.S.
14 Harris v. State, Public Employees Relations Com’n, 568 So.2d 475 (Fla. 1st DCA 1990).
15 Id.
16 Section 295.07(1)(a)-(g), F.S.
17 Section 295.07(4)(a)-(b), F.S.
System as well as all Career Service System positions under the Florida College System and the School for the Deaf and the Blind are included;

- Positions in political subdivisions of the state which are filled by officers elected by popular vote or persons appointed to fill vacancies in such offices and the personal secretary of each officer;
- Members of boards and commissions;
- Persons employed on a temporary basis without benefits;
- Heads of departments;
- Positions that require licensure as a physician, licensure as an osteopathic physician, or licensure as a chiropractic physician; and
- Positions that require membership in the Florida Bar.

**Veterans’ Preference Applied when Examination Determines Qualification for Employment**

If an examination is used to determine qualification for employment, points are added to the final examination score as follows:  

<table>
<thead>
<tr>
<th>Veterans’ Preference Beneficiary</th>
<th>Preference Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disabled Veteran</td>
<td>15</td>
</tr>
<tr>
<td>Spouse of Person With Total Disability, Missing in Action,</td>
<td>15</td>
</tr>
<tr>
<td>Captured in Line of Duty, Etc.</td>
<td></td>
</tr>
<tr>
<td>Wartime Veteran</td>
<td>10</td>
</tr>
<tr>
<td>Un-remarried widow/widower of Person Who Died of a Service-</td>
<td>10</td>
</tr>
<tr>
<td>Connected Disability</td>
<td></td>
</tr>
<tr>
<td>Gold Star Family</td>
<td>10</td>
</tr>
<tr>
<td>Veteran</td>
<td>5</td>
</tr>
<tr>
<td>National Guard/Reserve</td>
<td>5</td>
</tr>
</tbody>
</table>

In order for points to be awarded, the applicant must first obtain a qualifying score on the examination.  

Florida law requires each government employer to enter the names of persons eligible for preference on an appropriate register or list in accordance with their respective ratings. For most positions, the names of all persons qualified to receive a fifteen-point preference whose service-connected disabilities have been rated to be 30 percent or more must be placed at the top of the appropriate register or employment list, in accordance with their respective ratings. A Florida court determined that this provision gives an absolute preference for veterans to be placed at the top of the employment list only if the candidate has a 30 percent or more disability rating.

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18 Section 295.08, F.S.
19 Rule 55A-7.010(1), F.A.C.
20 Section 295.08, F.S.
21 Id.
22 Harris v. State, Public Employees Relations Com’n., 568 So.2d 475 (Fla. 1st DCA 1990).
However, the court further declared that there are no statutory provisions suggesting that veterans receiving a five or ten point exam score augmentation must be hired over more qualified non-veterans.\(^{23}\)

**Veterans’ Preference Applied when Examination Does Not Determine Qualification for Employment**

If an examination is not used to determine qualifications for a position, preference is given as follows: \(^{24}\)

- First preference is given to disabled veterans and the spouses of veterans who have a total and permanent service-connected disability or who are missing in action, captured in line of duty by a hostile force, or detained or interned in line of duty by a foreign government or power; and
- Second preference is given to a veteran of any war; the unremarried widow or widower of a veteran who died of a service connected disability; the mother, father, legal guardian, or unremarried widow or widower of a service member who died as a result of military service under combat-related conditions; a veteran as defined in section s. 1.01(14), F.S., and a current member of any reserve component of the U.S. Armed Forces or the Florida National Guard.

**State Government Veterans’ Preference Provision**

With respect to non-exempt positions in the state’s career service system, Florida law requires the state to grant a preference in hiring and retention to an eligible person if the eligible person meets the minimum eligibility requirements for the position and has the knowledge, skills, and abilities required for the position.\(^{25}\) A disabled veteran employed as the result of being placed at the top of the appropriate employment list must be appointed for a probationary period of one year.\(^ {26}\) At the end of one year, if the disabled veteran’s performance is satisfactory, the veteran will acquire permanent employment status and will be subject to the employment rules of the DMS and the veteran’s employing agency.\(^ {27}\)

**State Equal Employment Policy**

Section 110.112, F.S., declares that the policy of the state is to afford equal employment opportunities through programs of affirmative and positive action allowing for the full utilization of women and minorities. Each executive agency is required to develop and implement an affirmative action plan; \(^ {28}\) establish annual goals in its affirmative action plan for ensuring full

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\(^{23}\) Id.
\(^{24}\) Section 295.085, F.S.
\(^{25}\) Section 110.2135(1), F.S.
\(^{26}\) Section 110.2135(2), F.S.
\(^{27}\) Id.
\(^{28}\) Section 110.112(2)(a), F.S.
utilization of groups underrepresented in the agency’s workforce as compared to the relevant labor market;\textsuperscript{29} and appoint an affirmative action–equal employment opportunity officer.\textsuperscript{30}

Section 110.201(5), F.S., requires the DMS to develop an annual workforce report that contains data representative of the state’s human resources.\textsuperscript{31} The DMS is also required to include in its annual workforce report information relating to each executive agency’s affirmative action plan.\textsuperscript{32}

III. Effect of Proposed Changes:

CS/SB 1538 amends s. 295.07, F.S., to require each state agency and authorize political subdivisions of the state to develop and implement a written veterans’ recruitment plan to establish annual goals for ensuring the full use of veterans in the agency’s or political subdivision’s workforce. These veterans’ recruitment plans apply to veterans and their family members who are eligible for veterans’ employment preference identified in s. 295.07(1), F.S.

The bill requires the DMS to annually collect and publish on its website and include in its annual workforce report statistical data for each state agency on the following:
- The number of persons who claim veterans’ preference;
- The number of persons who are hired through the veterans’ preference; and
- The number of persons who are hired as a result of the veterans’ recruitment plan.

The bill also updates cross references in ss. 295.085 and 295.09, F.S.

The bill takes effect on October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

\textsuperscript{29} Section 110.112(2)(b), F.S
\textsuperscript{30} Section 110.112(2)(c), F.S., provides that the duties of the affirmative action–equal employment opportunity officer include “determining annual goals, monitoring agency compliance, and providing consultation to managers regarding progress, deficiencies, and appropriate corrective action.”
\textsuperscript{32} Section 110.112(2)(d), (e), and (6), F.S.
V. **Fiscal Impact Statement:**

A. **Tax/Fee Issues:**

None.

B. **Private Sector Impact:**

CS/SB 1538 may provide a positive fiscal impact to veterans in the state. Recruiting veterans to the state’s government workforce will likely increase the number of veterans that obtain gainful employment.

C. **Government Sector Impact:**

The bill has an indeterminate negative fiscal impact to the state and local governments. The cost for state agencies to develop and implement a veterans’ recruitment plan is unknown but most likely insignificant and may be handled within existing resources.

The fiscal impact to the DMS is indeterminate. The cost for the DMS to collect the required statistical data for all state agencies, annually update the data on its website, and include the data in its annual workforce report is unknown, but may be insignificant. In addition, the DMS states the bill may require People First programming modifications in order to capture the specified data. These additional costs could be handled within existing resources or requested in the agency’s legislative budget request.

Allowing each political subdivision of the state to develop and implement a written veterans’ recruitment plan may create an indeterminate negative fiscal impact to these political subdivisions. However, this is an authorization for the political subdivisions to do so, not a requirement.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 295.07, 295.085, and 295.09.

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33 Email from Ricky Moulton, Department of Management Services, Re: CS/HB 1219, which is similar to CS/SB 1538 (Feb. 4, 2016) (on file with the Appropriations Subcommittee on General Government staff).
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 Military and Veterans Affairs, Space, and Domestic Security on January 26, 2016:
The CS:
- Relocates the bill’s veterans recruitment plan provisions to the existing veterans preference statute (s. 295.07);
- Allows political subdivisions to develop veteran’s recruitment plans.
- Removes the requirement that each executive agency appoint a veterans employment officer;
- Removes training requirements for the DMS and executive agencies relating to recruitment and employment of veterans;
- Provides that an agency’s veterans recruitment plan will apply to veterans and their family members who are eligible for state veterans’ preference; and
- Requires the DMS to collect statistical data on the effectiveness and utilization of veterans’ preference and veteran recruitment practices.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Evers

A bill to be entitled

An act relating to veterans employment; amending s. 295.07, F.S.; requiring each state agency and authorizing other political subdivisions of the state to develop and implement a veterans recruitment plan; requiring specified goals for veterans recruitment plans; requiring the Department of Management Services to collect specified data and to include the data in its annual workforce report and on its website; amending ss. 295.085 and 295.09, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsection (4) of section 295.07, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

295.07 Preference in appointment and retention.—
(4) (a) Each state agency shall, and political subdivisions of the state may, develop and implement a veterans recruitment plan that establishes annual goals for ensuring the full use of veterans in the agency's or political subdivision's workforce. Each veterans recruitment plan must be designed to meet the established goals.

(b) The Department of Management Services shall collect statistical data for each state agency on the number of persons who claim veterans' preference, the number of persons who are hired through the veterans’ preference, and the number of persons who are hired as a result of the veterans recruitment plan. The department shall annually update the statistical data on its website and include it in its annual workforce report.

(c) For purposes of this subsection, a veterans recruitment plan applies to veterans and their family members identified in subsection (1).

Section 2. Section 295.085, Florida Statutes, is amended to read:

295.085 Positions for which a numerically based selection process is not used.—In all positions in which the appointment or employment of persons is not subject to a written examination, with the exception of positions that are exempt under s. 295.07(5), first preference in appointment, employment, and retention shall be given by the state and political subdivisions in the state to a person included under s. 295.07(1)(a) or (b), and second preference shall be given to a person included under s. 295.07(1)(c), (d), (e), (f), or (g) who possess the minimum qualifications necessary to discharge the duties of the position involved.

Section 3. Paragraph (a) of subsection (1) of section 295.09, Florida Statutes, is amended to read:

295.09 Reinstatement or reemployment; promotion preference.—
(1) (a) When an employee of the state or any of its political subdivisions employed in a position subject or not subject to a career service system or other merit-type system, with the exception of those positions which are exempt pursuant to s. 295.07(5), has served in the Armed Forces of the United States and is discharged or separated therefrom with an honorable discharge, the state or its political subdivision shall reemploy or reinstate such person to the same position that he or she held prior to such service in the armed forces,
or to an equivalent position, provided such person returns to the position within 1 year of his or her date of separation or, in cases of extended active duty, within 1 year of the date of discharge or separation subsequent to the extension. Such person shall also be awarded preference in promotion and shall be promoted ahead of all others who are as well qualified or less qualified for the position. When an examination for promotion is utilized, such person shall be awarded preference points, as provided in s. 295.08, and shall be promoted ahead of all those who appear in an equal or lesser position on the promotional register, provided he or she first successfully passes the examination for the promotional position.

Section 4. This act shall take effect October 1, 2016.
THE FLORIDA SENATE

APPEARANCE RECORD

2/11/2016

Meeting Date

SB 1538

Bill Number (if applicable)

Veterans Employment

Topic

Jessica Kraynak (Cray-Nack)

Name

Legislative Analyst

Job Title

Suite 2105, the Capitol

Address

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Speaking: For Against Information

Representing The Florida Dept. of Veterans’ Affairs

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

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 (10/14/14)
02/11/2016
Meeting Date

Military and Veterans Affairs

Antonio

Veteran

2313 Nineteenth Court

Cape Coral, FL 33914

Phone

Email

Speaking: ☒ Against
Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

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.
To: Senator Hays  
Chair, Appropriations Subcommittee on General Government  

Subject: Committee Agenda Request  

January 26, 2016  

Dear Senator Hays,  

I respectfully request that Senate Bill 1538, regarding Veterans Employment, be placed on the:  

☒ committee agenda at your earliest possible convenience.  
☐ next committee agenda.  

C  

[Signature]  

Senator Greg Evers  
Florida Senate, District 2  

File signed original with committee office
The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: PCS/CS/SB 1604 (141410)

INTRODUCER: Appropriations Subcommittee on General Government; Health Policy Committee; and Senator Grimsley

SUBJECT: Drugs, Devices, and Cosmetics

DATE: February 15, 2016

I. Summary:

PCS/CS/SB 1604 updates the Florida Drug and Cosmetic Act (Act) to bring it into conformity with the federal Food, Drug and Cosmetic Act (federal act). Recent amendments to the federal act preempted Florida’s regulatory structure. The bill replaces provisions relating to pedigree papers with federal requirements for a transaction history, transaction information, or transaction statement for certain recordkeeping for the manufacture and distribution of prescription drugs. Certain activities are exempted from the definition of wholesale distribution in order to conform regulatory oversight in Florida to the federal regulatory scheme.

The bill provides for administrative efficiencies and cost savings for:

- Initial and renewal permitting for prescription drug wholesale distributors and out-of-state prescription drug wholesale distributors by eliminating the distinction between primary and secondary wholesalers and the supplemental information required of a secondary wholesaler for permitting;
- Allowing certain key personnel to submit an affidavit that information submitted on a previous personal statement remains unchanged;
- Modifying the requirement for a surety bond; and
- Authorizing the Department of Business and Professional Regulation (DBPR) to contract with a vendor or enter into interagency agreements for electronic fingerprinting.

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes
The bill establishes a nonresident prescription drug repackager permit, along with the requirement to obtain such a permit if a repackager located outside the state distributes its repackaged prescription drugs into the state. This repackager is also required to comply with provisions applicable to prescription drug manufacturers. The DBPR must establish a virtual prescription drug manufacturer permit and a virtual out-of-state prescription drug manufacturer permit for manufacturers that do not physically manufacture and possess their prescription drugs.

The DBPR is also authorized to issue non-disciplinary citations for violations of the Act for which there is no substantial threat to the public health, safety, or welfare.

The bill has an indeterminate, but most likely insignificant, fiscal impact on state funds.

This bill is effective July 1, 2016.

II. Present Situation:

The Florida Drug and Cosmetic Act (Act) is found in ch. 499, F.S. The purpose of the Act is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The DBPR is responsible for regulating and enforcing the Act and is specifically charged with administering and enforcing the Act to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.¹

In 2003, the Legislature enacted the Prescription Drug Protection Act,² which put in place strong safeguards for the distribution of prescription drugs in, into, and from this state. This legislation was predicated on the findings and recommendations of the report of the Seventeenth Statewide Grand Jury in its First Interim Report to the Legislature.³ That grand jury was called to examine, among other matters, the safety of prescription drugs in Florida. In particular, they examined the situation concerning the sale and re-sale of prescription drugs in the wholesale market.

The Prescription Drug Protection Act required prescription drug wholesalers to provide pedigree papers (a transaction history for tracing a prescription drug through the market) for the wholesale distribution of prescription drugs, strengthened permitting requirements for prescription drug wholesale distributors, especially for wholesale distributors that did not purchase directly from drug manufacturers (referred to as secondary wholesalers), and established significant criminal penalties for prescription drug violations related to counterfeiting and diversion.

In 2013, the Drug Quality and Security Act (DQSA) amended the federal act. The DQSA established a uniform national policy for product tracing and other requirements relating to the prescription drug supply chain. The DQSA expressly preempted states from establishing or continuing in effect any requirements for tracing products through the distribution system which are inconsistent with, more stringent than, or in addition to, any requirement applicable under DQSA. The preemption also included prohibiting states from establishing or continuing any standards, requirements, or regulations with respect to wholesale prescription drug distributor or

¹ See s 499.002, F.S.
² See ch. 2003-155, L.O.F.
third-party logistics provider licensure that are inconsistent with, less stringent than, directly related to, or covered by the standards and requirements of the DQSA.  

III. Effect of Proposed Changes:

Section 1 amends s. 499.003, F.S., to revise definitions to conform to the changes made to the Florida Drug and Cosmetic Act in this bill. New definitions are provided for: “active pharmaceutical ingredient” and “affiliate.” The following definitions are repealed: “affiliated group,” “authenticate,” “drop shipment,” “normal distribution chain,” “pedigree paper,” “primary wholesale distributor,” and “secondary wholesale distributor.” The following definitions are substantially revised:

- “Distribute” means to sell, purchase, trade, deliver, handle, store, or receive. The term does not mean to administer or dispense. Deleted from the definition is the concept of offering to perform any of these activities and the method of distribution, i.e., by passage of title, physical movement, or both. The exemption for billing and invoicing activities is also deleted from the definition, but is addressed as an exception to the definition of wholesale distribution.

- “Manufacturer” is reworded to more accurately describe co-licensed partners and private label distributors. Third party logistics (TPL) providers are deleted from the definition.

- “Wholesale distribution” is clarified that the term includes both the distribution to a person and the receipt by a person, of a prescription drug, other than the consumer or patient. The exceptions to wholesale distribution are expanded and revised. Drug shortages not caused by a public health emergency are not deemed an emergency medical reason for the distribution of a prescription drug by a retail pharmacy. This provision is found in rule, but is now specifically addressed in statute. New exclusions from the definition of wholesale distribution include:
  - Intracompany distribution between members of an affiliate or within a manufacturer;
  - Distribution of a prescription drug by the manufacturer of that prescription drug;
  - Distribution of a prescription drug by a TPL provider in accordance with state and federal law if the TPL provider does not own the drug;
  - Distribution of, or offer to distribute, a prescription drug by a repackager that is registered under the federal act that owned or possessed the drug and which repackaged it;
  - The purchase or other acquisition by a dispenser, hospital, or other health care entity for use by that dispenser, hospital, or other health care entity;
  - Distribution of a prescription drug for the purpose of repacking the drug owned by a hospital for the hospital’s use or other health care entity that is under common control with the hospital;
  - Distribution of minimal quantities of prescription drugs by a retail pharmacy to a licensed practitioner for office use in compliance with the Florida Pharmacy Act and its rules;
  - Distribution of an intravenous prescription drug that is intended for replenishment of fluids and electrolytes, or to maintain the equilibrium of water and minerals in the body;
  - Distribution of a prescription drug that is intended for irrigation or sterile water;
  - Distribution of exempt medical convenience kits;

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1 See sec. 585 of the Food, Drug, and Cosmetic Act.
2 The definition of “active pharmaceutical ingredient” is moved from within the definition of “drug.”
o Transport by a common carrier if it does not own the prescription drug;
o Saleable returns when conducted by a dispenser;
o Facilitating the distribution of a prescription drug by providing solely administrative services;
o Distribution of a specially-priced or donated prescription drug by a charitable organization to a licensed health care practitioner, health care clinic permitted pursuant to the Act, or to the Department of Health (DOH) or other governmental health care entity for providing emergency medical services, if the distributor and recipient receive no direct or indirect financial benefit other than tax benefits for charitable contributions; and
o Distribution of a medical gas in compliance with part III of the Act.

• “Wholesale distributor” means a person other than a manufacturer, a manufacturer’s co-licensed partner, a TPL provider, or a repackager, who is engaged in wholesale distribution.

Sections 2, 3, 4, and 20 amend s. 499.005, F.S., relating to prohibited acts; s. 499.0051, F.S., relating to criminal acts; s. 499.006, F.S., relating to adulterated drug or device; and s. 921.0022, F.S., relating to the criminal punishment code. The bill removes references to Florida’s pedigree requirements throughout chapter 499, F.S. In addition, the bill replaces the references to “pedigree papers” with references to “transaction history”, “transaction information”, or “transaction statement” to conform to federal requirements, the federal pre-emption of individual state regulation pertaining to certain recordkeeping for the manufacture and distribution of prescription drugs, and changes made by this bill.

Section 5 amends s. 499.01, F.S., relating to permits to:
• Add a nonresident prescription drug repackager permit. This permit is required for any person located outside Florida but within the United States or its territories that repackages prescription drugs and distributes them into Florida. This permittee is required to comply with all provisions and rules that are applicable to prescription drug manufacturers and must be registered as a drug establishment with the federal Food and Drug Administration (FDA).
• Require the DBPR to adopt rules for issuing a virtual prescription drug manufacturer permit and virtual nonresident prescription drug manufacturer permit to a person that manufactures prescription drugs but does not make or take physical possession of any prescription drugs, for example when a contract manufacturer is used. Because these manufacturers do not possess prescription drugs, the DBPR is authorized to exempt them by rule from certain establishment, security, and storage requirements.
• Delete the $100,000 security bond requirement for prescription drug wholesalers and out-of-state prescription drug wholesaler; however a similar, less costly requirement is added to s. 499.012, F.S.
• Require an out-of-state prescription drug wholesaler, a TPL provider, or a nonresident prescription drug manufacturer distributing prescription drug active pharmaceutical ingredients into the state for the manufacture of an approved drug or biologic, which is not licensed by its resident state, to be licensed or registered under the federal act and for the recipient in Florida to maintain documentation of the supplier’s compliance.
• Conform requirements of various permits to the repeal of the pedigree paper requirements.
• Remove the restriction that the exemption from permitting for a nonresident prescription drug manufacturer to distribute prescription drug active pharmaceutical ingredients for research is applicable only if the distributions are in limited quantities, require that the label
of a prescription drug active pharmaceutical ingredient bear specific caution statement terminology, and require that a prescription drug manufacturer that obtains an active pharmaceutical ingredient from an exempt manufacturer maintain certain records detailing the specific clinical trials or biostudies for which the ingredient was obtained.

- Exempt a restricted prescription drug distributor that repackages and distributes a prescription drug to a not-for-profit rural hospital from compliance with current state and federal current good manufacturing practices relating to repackaging. Alternate provisions are made for the labeling of those prescription drugs.

Section 6 amends s. 499.012, F.S., relating to permit application requirements to:

- Clarify that a prescription drug manufacturer permit may be issued to the same address as a licensed nuclear pharmacy, even if the nuclear pharmacy holds a special sterile compounding permit under the Florida Pharmacy Act.
- Authorize the Department of Business and Professional Regulation (DBPR) to issue a retail pharmacy drug wholesale distributor permit to the address of a community pharmacy, even if the community pharmacy holds a special sterile compounding permit, as long as the community pharmacy is not a closed pharmacy.
- Provide that applications pending resolution of a deficiency after two years from the time the DBPR notified the applicant of the deficiency automatically expire.
- Require the DBPR to maintain trade secret information submitted in an application as trade secret.
- Authorize the issuance of four-year permits on selected permit types identified in rule.
- Authorize the DBPR to send a permit renewal notification at least 90 days before the expiration date of all permits which conspicuously notes the expiration date of the permit and that the establishment may not operate unless the permit is renewed timely. The renewal notification will eliminate the costs associated with sending the renewal application.
- For a prescription drug wholesale distributor or out-of-state prescription drug wholesale distributor permit:
  - Require a $100 delinquent fee for a renewal application that is submitted later than 45 days prior to the permit’s expiration date.
  - Substitute submission of the applicant’s gross annual receipts attributable to prescription drug wholesale distribution activities for the previous tax year in lieu of more extensive information pertaining to prescription drug sales during certain intermediate timeframes and annually, purchases directly from manufacturers for renewal permits, and estimated information for new applicants.
  - Allow a surety bond issued in this state or any other state or other equivalent security such as an irrevocable letter of credit, or a deposit in a trust account or financial institution, which includes the state as a beneficiary, to satisfy the bond requirement. The amount of the surety bond is tiered based on the applicant’s annual gross receipts. A bond of $100,000 is applicable if the annual gross receipts of the applicant’s previous tax year is over $10 million, or $25,000 if the annual gross receipts is $10 million or less.
  - Repeal the additional information required to be submitted by secondary wholesalers (wholesalers that did not purchase directly from manufacturers) since the concept of primary wholesale distributor and secondary wholesale distributor is eliminated in this bill.
Require proof of establishment inspection by the DBPR, the FDA, or another governmental entity. The DBPR may recognize the inspection conducted by another state if that state’s laws are substantially equivalent to the laws in Florida.

Authorize the DBPR to contract with a vendor or enter into interagency agreements to handle electronic fingerprinting.

Streamline the renewal requirements for the submission of a personal information statement for certain key individuals by allowing submission of a certification under oath that the most recently submitted statement submitted to the DBPR remains unchanged.

Section 7 amends s. 499.01201, F.S., to make conforming changes by removing obsolete references to the pedigree statutes in ch. 499, F.S.

Section 8 amends s. 499.0121, F.S., relating to the storage and handling of prescription drugs to conform changes associated with the repeal of the pedigree paper requirements and to include standards for active pharmaceutical ingredients that apply to other prescription drugs. This section is also amended to increase the number of unit doses, from 5,000 to 7,500 unit doses, of any one controlled substance that may be ordered during a one-month period before triggering an assessment by the wholesaler as to whether the purchase of that controlled substance is reasonable.

Section 9 amends s. 499.015, F.S., relating to registration of drugs, devices, and cosmetics to synchronize the expiration date of product registrations with the expiration date of the applicable manufacturing or repacking permit.

Section 13 amends s. 499.066, F.S., relating to penalties, to authorize the DBPR to adopt rules identifying low-risk violations of the act and applicable penalties, including monetary assessments and other remedial measures, for which a non-disciplinary citation may be issued. The person to whom a citation is issued may choose, in lieu of accepting the citation, to have the matter investigated more fully and processed according to the full procedures for violations of the Act in which discipline may be imposed. The low-risk violation are ones for which there is no substantial threat to the public health, safety, or welfare.

Section 14 amends s. 499.82, F.S., relating to definitions under ch. 499, Part III, F.S., (medical gas). Specifically, s. 499.82, F.S., amends the definition of “wholesale distribution” to clarify that the exceptions to wholesale distribution listed in the federal act – including the distribution of medical gases – are not included in the exemptions to wholesale distribution in Florida as that term relates to medical gases.

Sections 10, 11, 12, 15, 17, 18 and 19 amend s. 499.03, F.S., relating to possession of prescription drugs, s. 499.05, F.S., relating to rules, s. 499.051, F.S., relating to inspections and investigations, s. 499.89, F.S., relating to recordkeeping, s. 409.9201, F.S., relating to Medicaid fraud, s. 499.067, F.S., relating to denial, suspension or revocation of permit, certification, or registration, and s. 794.075, F.S., relating to sexual predators, respectively, to conform these sections of law to changes made in the bill.

Section 16 repeals s. 499.01212, relating to pedigree papers.
Section 21 provides that the effective date of the act is July 1, 2016.

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:

PCS/CS/SB 1604 updates and conforms the regulations for the distribution of prescription drugs in or into this state and eliminates potential ambiguity between Florida’s requirements and a uniform national approach. This uniformity should generate savings by regulated persons. Other changes to permit application submission requirements may streamline initial and renewal administrative paperwork, resulting in efficiencies in time and costs. Anecdotal information received from multiple wholesale distributors suggests that the annual submission of the renewal application consumes approximately 40 hours.

Cost savings associated with the reduction of information that is required to be provided in distributor permit applications and renewals could result in an estimated annual savings of $225,379 to the industry each year and an estimated saving of $1,105 per year per permittee.⁶

Allowing a surety bond that was obtained for licensure in another state to satisfy Florida’s requirement for a surety bond for prescription drug wholesale distributors and out-of-state wholesale distributors will generate a cost saving of $100,000 per qualifying permit. The tiered surety bond requirement may also help small businesses.

C. Government Sector Impact:

The bill provides for administrative efficiencies for the Department of Business and Professional Regulations (DBPR) in the regulation and enforcement of the Act which will

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⁶ See DBPR, Senate Bill 1604 Analysis, p. 13, (on file with the Senate Committee on Health Policy).
generate cost savings. The DBPR will annually save $579 in postage from changes to the process for renewal of permits.\textsuperscript{7} The DBPR will incur costs for technology changes in order to implement this Act; however, these costs can be absorbed within existing resources.

The bill amends ch. 499, F.S., to bring the statutes into conformity with the federal act, which has three permits not in current Florida law: nonresident repackager, virtual prescription drug manufacturer, and nonresident virtual prescription drug manufacturer. The entities that fall into these three new permits are already issued another type of permit by the DBPR. Under the bill, these permittees will be reclassified into the new permits and will not be charged a second time for the current permits. There will be no increased costs to the industry or increase in revenue to the DBPR.\textsuperscript{8} These three new permits will impose an initial registration fee of $1,500 and a biennial registration fee of $1,500.\textsuperscript{9} The current biennial fees for the virtual prescription drug manufacturer and the nonresident prescription drug manufacturer are $1,500; therefore, the cost will remain the same for these entities. The current biennial fee for the nonresident repackager is $1,600, as these entities are currently permitted as an out-of-state prescription drug wholesale distributor. The $100 difference in this fee is negligible, as the DBPR does not believe that there is a significant number of entities to whom this would apply.\textsuperscript{10}

\textbf{VI. Technical Deficiencies:}

None.

\textbf{VII. Related Issues:}

The bill exempts the distribution of minimal quantities of prescription drugs by a retail pharmacy for office use in compliance with the Florida Pharmacy Act and its rules from the definition of wholesale distribution. However, the requirement for a retail pharmacy drug wholesale distributor permit is still required in s. 499.01(2)(g), F.S., for a retail pharmacy that engages in the wholesale distribution of prescription drugs to practitioners of up to 30 percent of the pharmacy’s total annual prescription drug purchases. It is not apparent how these two sections of law are intended to co-exist and additional legislative direction may be warranted.

Lines 1580-1589 exempt a restricted prescription drug distributor that repackages and distributes a prescription drug to a not-for-profit rural hospital from compliance with all current state and federal current good manufacturing practices relating to repackaging. This may be overly broad and might create unreasonable risks for persons receiving those drugs in the rural hospital. Also, this provision may be read as exempting compliance with current good manufacturing practices for all repacked and distributed prescription drugs to all health care entities if at least one of the recipients is a rural hospital.

\textsuperscript{7} Id.\textsuperscript{8} Id.\textsuperscript{9} Id.\textsuperscript{10} Id.
VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 499.003, 499.005, 499.0051, 499.006, 499.01, 499.012, 499.01201, 499.0121, 499.015, 499.03, 499.05, 499.051, 499.066, 499.82, 499.89, 409.9201, 499.067, 794.075, and 921.0022.

This bill repeals section 499.01212 of the Florida Statutes.

IX. Additional Information:

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

   Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:
   The CS:
   • Increases the number of unit doses, from 5,000 to 7,500 unit doses, of any one controlled substance that may be ordered during a one-month period before triggering an assessment by the wholesaler as to whether the purchase of that controlled substance is reasonable; and
   • Specifies the equivalent security provided in lieu of a surety bond must include the State of Florida as a beneficiary, payable to the Professional Regulation Trust Fund within the DBPR.

   CS by Health Policy on January 26, 2016:
   The CS corrects a reference to a prescription drug manufacturer distributing their prescription drugs as opposed to engaging in the wholesale distribution of those drugs to comport with the federal act. The CS also reinstates the mandatory registration of cosmetic products manufactured in this state.

B. Amendments:

   None.
Appropriations Subcommittee on General Government (Altman) recommended the following:

**Senate Amendment**

Delete lines 1918 - 1920

and insert:

irrevocable letter of credit, or a deposit in a trust account or financial institution, which includes the State of Florida as a beneficiary, payable to the Professional Regulation Trust Fund.

The purpose of the bond or other security is to
Appropriations Subcommittee on General Government (Simpson) recommended the following:

**Senate Amendment (with directory and title amendments)**

Between lines 2414 and 2415 insert:

> (15) DUE DILIGENCE OF PURCHASERS.—
>
> (b) A wholesale distributor must take reasonable measures to identify its customers, understand the normal and expected transactions conducted by those customers, and identify those transactions that are suspicious in nature. A wholesale distributor must establish internal policies and procedures for
identifying suspicious orders and preventing suspicious
transactions. A wholesale distributor must assess orders for
more greater than 7,500 5,000 unit doses of any one controlled
substance in any one month to determine whether the purchase is
reasonable. In making such assessments, a wholesale distributor
may consider the purchasing entity’s clinical business needs,
location, and population served, in addition to other factors
established in the distributor’s policies and procedures. A
wholesale distributor must report to the department any
regulated transaction involving an extraordinary quantity of a
listed chemical, an uncommon method of payment or delivery, or
any other circumstance that the regulated person believes may
indicate that the listed chemical will be used in violation of
the law. The wholesale distributor shall maintain records that
document the report submitted to the department in compliance
with this paragraph.

===== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 2346 - 2347
and insert:
Section 8. Paragraph (d) of subsection (4), subsection (6),
and paragraph (b) of subsection (15) of section 499.0121,
Florida Statutes, are amended to read:

================ T I T L E A M E N D M E N T ===============
And the title is amended as follows:
Delete line 66
and insert:
ingredients; increasing the quantity of unit doses of a controlled substance that may be ordered in any given month by a customer without triggering a requirement that a wholesale distributor perform a reasonableness assessment; conforming provisions; amending s.
By the Committee on Health Policy; and Senator Grimsley

A bill to be entitled

An act relating to drugs, devices, and cosmetics;

amending s. 499.003, F.S.; providing, revising, and
deleting definitions for purposes of the Florida Drug
and Cosmetic Act; amending s. 499.005, F.S.; revising
prohibited acts related to the distribution of
prescription drugs; conforming a cross-reference;
amending s. 499.0051, F.S.; prohibiting the
distribution of prescription drugs without delivering
a transaction history, transaction information, and
transaction statement; providing penalties; deleting
provisions and revising terminology related to
pedigree papers, to conform to changes made by the
act; amending s. 499.006, F.S.; conforming provisions;
amending s. 499.01, F.S.; requiring nonresident
prescription drug repackers to obtain an operating
permit; authorizing a manufacturer to engage in the
wholesale distribution of prescription drugs;
providing for the issuance of virtual prescription
drug manufacturer permits and virtual nonresident
prescription drug manufacturer permits to certain
persons; providing exceptions from certain virtual
manufacturer requirements; requiring a nonresident
prescription drug repacker permit for certain
persons; deleting surety bond requirements for
prescription drug wholesale distributors; requiring
that certain persons obtain an out-of-state
prescription drug wholesale distributor permit
requiring certain third party logistic providers to be
licensed; requiring research and development labeling
on certain prescription drug active pharmaceutical
ingredient packaging; requiring certain manufacturers
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499.01201, F.S.; conforming provisions; amending s. 499.0121, F.S.; revising prescription drug recordkeeping requirements; requiring inventories and records of transactions for active pharmaceutical ingredients; conforming provisions; amending s. 499.015, F.S.; providing for the expiration, renewal, and issuance of certain drug, device, and cosmetic product registrations; providing for product registration fees; amending ss. 499.03, 499.05, and 499.051, F.S.; conforming provisions to changes made by the act; amending s. 499.066, F.S.; authorizing the issuance of nondisciplinary citations; authorizing the department to adopt rules designating violations for which a citation may be issued; authorizing the department to recover investigative costs pursuant to the issuance of a citation; providing for service of a citation; amending s. 499.82, F.S.; revising the definition of “wholesale distribution” for purposes of medical gas requirements; amending s. 499.89, F.S.; conforming provisions; repealing s. 499.01212, F.S., relating to pedigree papers; amending ss. 409.9201, 499.067, 794.075, and 921.0022, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 499.003, Florida Statutes, is amended to read:

499.003 Definitions of terms used in this part.—As used in this part, the term:

(1) “Active pharmaceutical ingredient” includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or animals.

(2) “Advertisement” means any representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of drugs, devices, or cosmetics.

(3) “Affiliate” means a business entity that has a relationship with another business entity in which, directly or indirectly:

(a) The business entity controls, or has the power to control, the other business entity; or

(b) A third party controls, or has the power to control, both business entities.

(2) “Affiliated group” means an affiliated group as defined by s. 1504 of the Internal Revenue Code of 1986, as amended, which is composed of chain drug entities, including at least 50 retail pharmacies, warehouses, or repackagers, which are members of the same affiliated group. The affiliated group must disclose the names of all its members to the department.

(4) “Affiliated party” means:

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(a) A director, officer, trustee, partner, or committee
corporation of the permittee or applicant;
(b) A person who, directly or indirectly, manages,
controls, or oversees the operation of a permittee or applicant,
regardless of whether such person is a partner, shareholder,
manager, member, officer, director, independent contractor, or
employee of the permittee or applicant;
(c) A person who has filed or is required to file a
personal information statement pursuant to s. 499.012(9) or is
required to be identified in an application for a permit or to
renew a permit pursuant to s. 499.012(8); or
(d) The five largest natural shareholders that own at least
5 percent of the permittee or applicant.
(5) "Applicant" means a person applying for a permit or
certification under this part.
(6) "Authenticate" means to affirmatively verify upon
receipt of a prescription drug that each transaction listed on
the pedigree paper has occurred.
(a) A wholesale distributor is not required to open a
sealed, medical convenience kit to authenticate a pedigree paper
for a prescription drug contained within the kit.
(b) Authentication of a prescription drug included in a
sealed, medical convenience kit shall be limited to verifying
the transaction and pedigree information received.
(6) "Certificate of free sale" means a document prepared by
the department which certifies a drug, device, or cosmetic, that
is registered with the department, as one that can be legally
sold in the state.
counterfeited, falsely created, or contains any altered, false, or misrepresented matter.

(12) "Cosmetic" means an article, with the exception of soap, that is:

(a) Intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; or

(b) Intended for use as a component of any such article.

(13) "Counterfeit drug," "counterfeit device," or "counterfeit cosmetic" means a drug, device, or cosmetic which, or the container, seal, or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug, device, or cosmetic manufacturer, processor, packer, or distributor other than the person that in fact manufactured, processed, packed, or distributed that drug, device, or cosmetic and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, that other drug, device, or cosmetic manufacturer, processor, packer, or distributor.

(14) "Department" means the Department of Business and Professional Regulation.

(15) "Device" means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including its components, parts, or accessories, which is:

(a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, or any supplement thereof,
(b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals;

c) Intended to affect the structure or any function of the body of humans or other animals; or

d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), and includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories. For purposes of this paragraph, an "active pharmaceutical ingredient" includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.

(18) "Establishment" means a place of business which is at one general physical location and may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common exclusive ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. For purposes of permitting, each suite, unit, floor, or building must be identified in the most recent permit application.


(20) "Freight forwarder" means a person who receives prescription drugs which are owned by another person and designated by that person for export, and exports those prescription drugs.

(21) "Health care entity" means a closed pharmacy or any person, organization, or business entity that provides diagnostic, medical, surgical, or dental treatment or care, or chronic or rehabilitative care, but does not include any wholesale distributor or retail pharmacy licensed under state law to deal in prescription drugs. However, a blood establishment is a health care entity that may engage in the wholesale distribution of prescription drugs under s. 499.01(2)(h)1.c.

(22) "Health care facility" means a health care facility licensed under chapter 395.

(23) "Hospice" means a corporation licensed under part IV of chapter 400.

(24) "Hospital" means a facility as defined in s. 395.002 and licensed under chapter 395.

(25) "Immediate container" does not include package liners.

(26) "Label" means a display of written, printed, or graphic matter upon the immediate container of any drug, device, or cosmetic. A requirement made by or under authority of this part or rules adopted under this part that any word, statement, or other information appear on the label is not complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail
(27) "Labeling" means all labels and other written, printed, or graphic matters:
(a) Upon a drug, device, or cosmetic, or any of its containers or wrappers; or
(b) Accompanying or related to such drug, device, or cosmetic.
(28) "Manufacture" means the preparation, deriving, compounding, propagation, processing, producing, or fabrication of any drug, device, or cosmetic.
(29) "Manufacturer" means:
(a) A person who holds a New Drug Application, an Abbreviated New Drug Application, a Biologics License Application, or a New Animal Drug Application approved under the federal act or a license issued under s. 351 of the Public Health Service Act, 42 U.S.C. s. 262, for such drug or biologics, or if such drug or biologics is not the subject of an approved application or license, the person who manufactured the drug or biologics; a person who prepares, derives, manufactures, or produces a drug, device, or cosmetic;
(b) A co-licensed partner of the person described in paragraph (a) who obtains the drug or biologics directly from a person described in paragraph (a), paragraph (c), or this paragraph. The holder or holders of a New Drug Application (NDA), an Abbreviated New Drug Application (ANDA), a Biologics License Application (BLA), or a New Animal Drug Application (NADA), provided such application has become effective or is otherwise approved consistent with s. 499.023;
(c) An affiliate of a person described in paragraph (a), paragraph (b), or this paragraph that receives the drug or biologics directly from a person described in paragraph (a), paragraph (b), or this paragraph. A private label distributor for whom the private label distributor’s prescription drugs are originally manufactured and labeled for the distributor and have not been repackaged; or
(d) A person who manufactures a device or a cosmetic. A person registered under the federal act as a manufacturer of a prescription drug, who is described in paragraph (a), paragraph (b), or paragraph (c), who has entered into a written agreement with another prescription drug manufacturer that authorizes either manufacturer to distribute the prescription drug identified in the agreement as the manufacturer of that drug consistent with the federal act and its implementing regulations.
(30) A member of an affiliated group that includes, but is not limited to, persons described in paragraph (a), paragraph (b), paragraph (c), or paragraph (d), which member distributes prescription drugs, whether or not obtaining title to the drugs, only for the manufacturer of the drugs who is also a member of the affiliated group. As used in this paragraph, the term "affiliated group" means an affiliated group as defined in s. 496 of the Internal Revenue Code of 1986, as amended. The manufacturer must disclose the names of all of its affiliated group members to the department;
(31) A person permitted as a third party logistics provider, as defined in s. 499.023, who has entered into a written agreement with another drug, device, or cosmetic manufacturer that authorizes such manufacturers to provide warehousing, distribution, or other logistics services on behalf of a person described in paragraph 31 above.
The term does not include a pharmacy that is operating in compliance with pharmacy practice standards as defined in chapter 465 and rules adopted under that chapter.

(30) "Medical convenience kit" means packages or units that contain combination products as defined in 21 C.F.R. s. 3.2(e)(2).

(31) "Medical gas" means any liquefied or vaporized gas with other gases, and as defined in the federal act.

(32) "New drug" means:

(a) Any drug the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling of that drug; or

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under certain conditions, has been recognized for use under such conditions, but which drug has not, other than in those investigations, been used to a material extent or for a material time under such conditions.

(33) "Normal distribution chain" means a wholesale distribution of a prescription drug in which the wholesale distributor or its wholly owned subsidiary purchases and receives the specific unit of the prescription drug directly from the manufacturer and distributes the prescription drug directly, or through up to two intracompany transfers, to a chain pharmacy warehouse or a person authorized by law to purchase prescription drugs for the purpose of administering or dispensing the drug, as defined in s. 465.001. For purposes of this subsection, the term "intracompany" means any transaction or transfer between any parent, division, or subsidiary wholly owned by a corporate entity.

(34) "Official compendium" means the current edition of the official United States Pharmacopoeia and National Formulary, or any supplement thereto.

(35) "Permittee" means any person holding a permit issued under this chapter pursuant to s. 499.032.

(36) "Person" means any individual, child, joint venture, syndicate, fiduciary, partnership, corporation, division of a corporation, firm, trust, business trust, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within this state, and any representative, agent, or agency of any of the foregoing, or any other group or combination of the foregoing.

(37) "Pharmacist" means a person licensed under chapter 465.
of its purchases of prescription drugs directly from manufacturers in the previous year; and

(41). Directly purchased prescription drugs from not fewer than 50 different prescription drug manufacturers in the previous year; or

2. Has, or the affiliated group, as defined in s. 1504 of the Internal Revenue Code, of which the wholesale distributor is a member, at least:

(a) Purchased 90 percent or more of the total dollar volume of its purchases of prescription drugs directly from the manufacturer in the previous year; or

(b) Purchased 90 percent or more of the total dollar volume of its purchases of prescription drugs directly from the manufacturer in the previous year; and

(c) Purchased 90 percent or more of the total dollar volume of its purchases of prescription drugs directly from the manufacturer in the previous year; and

Prepackaged drug product means a drug that originally was in finished packaged form sealed by a manufacturer and that is placed in a properly labeled container by a pharmacy or practitioner authorized to dispense pursuant to chapter 465 for the purpose of dispensing in the establishment in which the prepackaging occurred.

Prescription drug means a prescription, medicinal, or legend drug, including, but not limited to, finished dosage forms or active pharmaceutical ingredients subject to, defined by, or described by s. 503(b) of the federal act or s. 465.003(8), s. 499.007(13), subsection (31), or subsection (41), except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

Prescription drug label means any display of written, printed, or graphic matter upon the immediate container of any prescription drug before it is dispensed, except that an active pharmaceutical ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in this state are also prescription drugs.

Pharmacy means an entity licensed under chapter 465 for the purpose of dispensing in the establishment.

Primary wholesale distributor means any wholesale distributor that:

(a) Purchased 90 percent or more of the total dollar volume of its purchases of prescription drugs directly from manufacturers in the previous year; and

(b) Has, or the affiliated group, as defined in s. 1504 of the Internal Revenue Code, of which the wholesale distributor is a member, at least:

1. Purchased made by the wholesale distributor directly from the manufacturer of prescription drugs; and

2. Transferred from a member of an affiliated group, as defined in s. 1504 of the Internal Revenue Code, of which the wholesale distributor is a member, if:

a. The affiliated group purchases 90 percent or more of the total dollar volume of its purchases of prescription drugs from the manufacturer in the previous year; and

b. The wholesale distributor discloses to the department the name of all members of the affiliated group of which the wholesale distributor is a member and the affiliated group agrees in writing to provide records on prescription drug purchases by the members of the affiliated group not later than 48 hours after the department requests access to such records, regardless of the location where the records are stored.

Proprietary drug,” or “OTC drug,” means a patent or over-the-counter drug in its unbroken, original package, which drug is sold to the public by, or under the authority of, the manufacturer or primary distributor thereof, is not

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misbranded under the provisions of this part, and can be purchased without a prescription.

(44) "Repackage" includes repacking or otherwise changing the container, wrapper, or labeling to further the distribution of the drug, device, or cosmetic.

(45) "Repackager" means a person who repackages. The term excludes pharmacies that are operating in compliance with pharmacy practice standards as defined in chapter 465 and rules adopted under that chapter.

(46) "Retail pharmacy" means a community pharmacy licensed under chapter 465 that purchases prescription drugs at fair market prices and provides prescription services to the public.

(47) "Secondary wholesale distributor" means a wholesale distributor that is not a primary wholesale distributor.

(48) "Veterinary prescription drug" means a prescription drug intended solely for veterinary use. The label of the drug must bear the statement, "Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian."

(49) "Wholesale distribution" means the distribution of a prescription drug to a person other than a consumer or patient, or the receipt of a prescription drug by a person other than the consumer or patient, but does not include:

(a) Any of the following activities, which is not a violation of s. 499.005(21) if such activity is conducted in accordance with s. 499.01(2)(h) 499.01(2)(h):

1. The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a prescription drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of that organization.

2. The distribution sale, purchase, or trade of a prescription drug or an offer to distribute sell, purchase, or trade a prescription drug by a charitable organization described in s. 501(c)(3) of the Internal Revenue Code of 1986, as amended and revised, to a nonprofit affiliate of the organization to the extent otherwise permitted by law.

3. The distribution sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities that are under common control. For purposes of this subparagraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, by voting rights, by contract, or otherwise.

4. The distribution sale, purchase, trade, or other transfer of a prescription drug from or for any federal, state, or local government agency or any entity eligible to purchase prescription drugs at public health services prices pursuant to Pub. L. No. 102-585, s. 602 to a contract provider or its subcontractor for eligible patients of the agency or entity under the following conditions:

a. The agency or entity must obtain written authorization for the distribution sale, purchase, trade, or other transfer of a prescription drug under this subparagraph from the Secretary of Business and Professional Regulation or his or her designee.

b. The contract provider or subcontractor must be
authorized by law to administer or dispense prescription drugs.

c. In the case of a subcontractor, the agency or entity
must be a party to and execute the subcontract.

d. The contract provider and subcontractor must maintain
and produce immediately for inspection all records of movement
or transfer of all the prescription drugs belonging to the
agency or entity, including, but not limited to, the records of
receipt and disposition of prescription drugs. Each contractor
and subcontractor dispensing or administering these drugs must
maintain and produce records documenting the dispensing or
administration. Records that are required to be maintained
include, but are not limited to, a perpetual inventory itemizing
drugs received and dispensed by prescription number or
administered by patient identifier, which must be submitted to
the agency or entity quarterly.

e. The contract provider or subcontractor may administer or
dispense the prescription drugs only to the eligible patients of
the agency or entity or must return the prescription drugs for
or to the agency or entity. The contract provider or
subcontractor must require proof from each person seeking to
fill a prescription or obtain treatment that the person is an
eligible patient of the agency or entity and must, at a minimum,
maintain a copy of this proof as part of the records of the
contractor or subcontractor required under sub-subparagraph d.

f. In addition to the departmental inspection authority set
forth in s. 499.051, the establishment of the contract provider
and subcontractor and all records pertaining to prescription
drugs subject to this subparagraph shall be subject to
inspection by the agency or entity. All records relating to

CODING: Words **stricken** are deletions; words **underlined** are additions.
The distribution of a prescription drug by a third-party logistics provider permitted or licensed pursuant to and in accordance with chapter 465.

The distribution of a prescription drug by the lawful dispensing of a prescription drug in accordance with chapter 465.

The distribution of prescription drug samples by manufacturers' representatives or distributors' representatives conducted in accordance with s. 499.028.

The distribution of a prescription drug by a third-party logistics provider permitted or licensed pursuant to and in accordance with chapter 465.
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prescription drug between pharmacies as a result of a sale, transfer, merger, or consolidation of all or part of the business of the pharmacies from or with another pharmacy, whether accomplished as a purchase and sale of stock or of business assets.

(m) The distribution of minimal quantities of prescription drugs by a licensed retail pharmacy to a licensed practitioner for office use in compliance with chapter 465 and rules adopted thereunder.

(n) The distribution of an intravenous prescription drug that, by its formulation, is intended for the replenishment of fluids and electrolytes, such as sodium, chloride, and potassium or calories, such as dextrose and amino acids.

(o) The distribution of an intravenous prescription drug used to maintain the equilibrium of water and minerals in the body, such as dialysis solutions.

(p) The distribution of a prescription drug that is intended for irrigation or sterile water, whether intended for such purposes or for injection.

(q) The distribution of an exempt medical convenience kit pursuant to 21 U.S.C. s. 353(e)(4)(M).

(r) A common carrier that transports a prescription drug, if the common carrier does not take ownership of the prescription drug.

(s) Saleable drug returns when conducted by a dispenser.

(t) Facilitating the distribution of a prescription drug by providing solely administrative services, including processing of orders and payments.

(u) The distribution by a charitable organization described

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in s. 501(c)(3) of the Internal Revenue Code of prescription drugs donated to or supplied at a reduced price to the charitable organization to:

1. A licensed health care practitioner, as defined in s. 456.001, who is authorized under the appropriate practice act to prescribe and administer prescription drugs;

2. A health care clinic establishment permitted pursuant to chapter 499; or

3. The Department of Health or the licensed medical director of a government agency health care entity, authorized to possess prescription drugs, for storage and use in the treatment of persons in need of emergency medical services, including controlling communicable diseases or providing protection from unsafe conditions that pose an imminent threat to public health,

if the distributor and the receiving entity receive no direct or indirect financial benefit other than tax benefits related to charitable contributions. Distributions under this section that involve controlled substances must comply with all state and federal regulations pertaining to the handling of controlled substances.

(v) The distribution of medical gas pursuant to part III of this chapter.

(g) “Wholesale distributor” means any person, other than a manufacturer, a manufacturer’s co-licensed partner, a third-party logistics provider, or a repackager, who is engaged in wholesale distribution of prescription drugs in or into this state, including, but not limited to, manufacturers.
Section 2. Subsections (21), (28), and (29) of section 499.005, Florida Statutes, are amended to read:

499.005 Prohibited acts.—It is unlawful for a person to perform or cause the performance of any of the following acts in this state:

(21) The wholesale distribution of any prescription drug that was:

(a) Purchased by a public or private hospital or other health care entity; or

(b) Donated or supplied at a reduced price to a charitable organization,

unless the wholesale distribution of the prescription drug is authorized in s. 499.01(2)(h)1.c. 499.01(2)(g)1.c.

(28) Failure to acquire or deliver a transaction history, transaction information, or transaction statement pedigree papers as required under this part and rules adopted under this part.

(29) The receipt of a prescription drug pursuant to a wholesale distribution without having previously received or simultaneously receiving a pedigree paper that was attested to as accurate and complete by the wholesale distributor as required under this part.

Section 3. Subsections (4) through (17) of section

...the wholesale distributor as required under this part.

Section 3. Subsections (4) through (17) of section

...commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(1) FAILURE TO MAINTAIN OR DELIVER TRANSACTION HISTORY, TRANSACTION INFORMATION, OR TRANSACTION STATEMENT PEDIGREE PAPERS.—

(a) A person engaged in the wholesale distribution of prescription drugs who fails to deliver to another person a complete and accurate transaction history, transaction information, or transaction statement pedigree papers concerning a prescription drug or contraband prescription drug, as required by this chapter and rules adopted under this chapter, before delivery to, or simultaneous with, the transfer of the prescription drug or contraband prescription drug to another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person engaged in the wholesale distribution of prescription drugs who fails to acquire a complete and accurate transaction history, transaction information, or transaction statement pedigree papers concerning a prescription drug or contraband prescription drug, as required by this chapter and rules adopted under this chapter, before delivery to, or simultaneous with, the receipt of the prescription drug or contraband prescription drug from another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
758     (c)  Any person who knowingly destroys, alters, conceals, or fails to maintain a complete and accurate transaction history, transaction information, or transaction statement pedigree paper concerning any prescription drug or contraband prescription drug, as required by this chapter and rules adopted under this chapter, in his or her possession commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

759     (2)  FAILURE TO AUTHENTICATE PEDIGREE PAPERS.—Effective July 1, 2006:

760     (a)  A person engaged in the wholesale distribution of prescription drugs who is in possession of pedigree papers concerning prescription drugs or contraband prescription drugs who fails to authenticate the matters contained in the pedigree papers and who nevertheless attempts to further distribute prescription drugs or contraband prescription drugs commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

761     (b)  A person in possession of pedigree papers concerning prescription drugs or contraband prescription drugs who falsely swears or certifies that he or she has authenticated the matters contained in the pedigree papers commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

762     (2)  KNOWING FORGERY OF TRANSACTION HISTORY, TRANSACTION INFORMATION, OR TRANSACTION STATEMENT PEDIGREE PAPERS.—A person who knowingly forges, counterfeits, or falsely creates any transaction history, transaction information, or transaction statement pedigree paper who falsely represents any factual matter contained on any transaction history, transaction information, or transaction statement pedigree paper; or who knowingly omits to record material information required to be recorded in a transaction history, transaction information, or transaction statement pedigree paper, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

763     (11)  ADULTERATED AND MISBRANDED DRUGS; FALSE ADVERTISEMENT; FAILURE TO MAINTAIN RECORDS RELATING TO DRUGS.—Any person who violates any of the following provisions commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; but, if the violation is committed after a conviction of such person under this subsection has become final, such person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or as otherwise provided in this part:

764     (h)  The failure to maintain records related to a drug as required by this part and rules adopted under this part, except for transaction histories, transaction information, or transaction statements pedigree papers, invoices, or shipping documents related to prescription drugs.

765     (i)  The possession of any drug in violation of this part, except if the violation relates to a deficiency in transaction histories, transaction information, or transaction statements pedigree papers.

766     (12)  REFUSAL TO ALLOW INSPECTION; SELLING, PURCHASING, OR TRADING DRUG SAMPLES; FAILURE TO MAINTAIN RECORDS RELATING TO PRESCRIPTION DRUGS.—Any person who violates any of the following provisions commits a felony of the third degree, punishable as
(7) It is not subject to subsection (6) and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium, or, when such tests or methods of assay are absent or inadequate, in accordance with those tests or methods of assay prescribed under authority of the federal act. A drug defined in the official compendium is not adulterated under this subsection merely because it differs from the standard of strength, quality, or purity set forth for that drug in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label;
(8) It is a drug:

(a) With which any substance has been mixed or packed so as to reduce the quality or strength of the drug; or

(b) For which any substance has been substituted wholly or in part.

(9) It is a drug or device for which the expiration date has passed.

(10) It is a prescription drug for which the required transaction history, transaction information, or transaction statement pedigree paper is nonexistent, fraudulent, or incomplete under the requirements of this part or applicable rules, or that has been purchased, held, sold, or distributed at any time by a person not authorized under federal or state law to do so.

(11) It is a prescription drug subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act which has been returned by a veterinarian to a limited prescription drug veterinary wholesale distributor.

Section 5. Section 499.01, Florida Statutes, is amended to read:

499.01 Permits.—

(1) Before operating, a permit is required for each person and establishment that intends to operate as:

(a) A prescription drug manufacturer;

(b) A prescription drug repackager;

(c) A nonresident prescription drug manufacturer;

(d) A nonresident prescription drug repackager.

(e) A prescription drug wholesale distributor;

(f) An out-of-state prescription drug wholesale distributor;

(g) A retail pharmacy drug wholesale distributor;

(h) A restricted prescription drug distributor;

(i) A complimentary drug distributor;

(j) A freight forwarder;

(k) A veterinary prescription drug retail establishment;

(l) A limited prescription drug wholesale distributor.

(m) A veterinary prescription drug wholesale distributor;

(n) An over-the-counter drug manufacturer;

(o) A device manufacturer;

(p) A cosmetic manufacturer;

(q) A third party logistics provider; or

(r) A health care clinic establishment.

(2) The following permits are established:

(a) Prescription drug manufacturer permit.—A prescription drug manufacturer permit is required for any person that is a manufacturer of a prescription drug and that manufactures or distributes such prescription drugs in this state.

1. A person that operates an establishment permitted as a prescription drug manufacturer may engage in wholesale distribution of prescription drugs for which the person is the manufacturer manufactured at that establishment, and must comply with s. 499.0121 and all other provisions of this part, except s. 499.0122, and the rules adopted under this part, except s. 499.0132, which apply to a wholesale distributor. The
2. A prescription drug manufacturer must comply with all appropriate state and federal good manufacturing practices.

3. A blood establishment, as defined in s. 381.06014, operating in a manner consistent with the provisions of 21 C.F.R. parts 211 and 600-640, and manufacturing only the prescription drugs described in s. 499.003(48)(j), 499.003(53)(d), is not required to be permitted as a prescription drug manufacturer under this paragraph or to register products under s. 499.015.

(b) Prescription drug repackager permit.—A prescription drug repackager permit is required for any person that repackages a prescription drug in this state.

1. A person that operates an establishment permitted as a prescription drug repackager may engage in wholesale distribution of prescription drugs repackaged at that establishment and must comply with all of the provisions of this part and the rules adopted under this part that apply to a prescription drug manufacturer wholesale distributor.

2. A prescription drug repackager must comply with all appropriate state and federal good manufacturing practices.

(c) Nonresident prescription drug manufacturer permit.—A nonresident prescription drug manufacturer permit is required for any person that is a manufacturer of prescription drugs, unless permitted as a third party logistics provider, located outside of this state or outside the United States and that engages in wholesale distribution in this state of such prescription drugs. Each such manufacturer must be permitted by the department and comply with all of the provisions required of a prescription drug manufacturer wholesale distributor under this part, except s. 499.0121. The department shall adopt rules for issuing a virtual nonresident prescription drug manufacturer permit to a person who engages in the manufacture of prescription drugs but does not make or take physical possession of any prescription drugs. The rules adopted by the department under this section may exempt virtual nonresident manufacturers from certain establishment, security, and storage requirements set forth in s. 499.0121.

1. A person that distributes prescription drugs for which the person is not the manufacturer must also obtain an out-of-state prescription drug wholesale distributor permit or third party logistics provider permit pursuant to this section to engage in the wholesale distribution of such prescription drugs when required by this part. This subparagraph does not apply to a manufacturer that distributes prescription drugs only for the manufacturer of the prescription drugs where both manufacturers are affiliates as defined in s. 499.003(30)(e).

2. Any such person must comply with the licensing or permitting requirements of the jurisdiction in which the establishment is located and the federal act, and any prescription drug distributed product wholesaled into this state must comply with this part. If a person intends to import...
A nonresident prescription drug repackager must comply with all of the provisions of this section and the rules adopted under this section that apply to a prescription drug manufacturer.

2. A nonresident prescription drug repackager must be permitted by the department and comply with all appropriate state and federal good manufacturing practices.

3. A nonresident prescription drug repackager must be registered as a drug establishment with the United States Food and Drug Administration.

(e) Prescription drug wholesale distributor permit.—A prescription drug wholesale distributor permit is required for any person who is a wholesale distributor of prescription drugs and that may engage in the wholesale distribution of prescription drugs in this state. A prescription drug wholesale distributor that applies to the department for a new permit or the renewal of a permit must submit a bond of $100,000, or other equivalent means of security acceptable to the department, such as an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to the Professional Regulation Trust Fund. The purpose of the bond is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay within 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee's license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part involving the permit is concluded, including any appeal, whichever occurs later. The department may adopt rules for issuing a prescription drug wholesale distributor-broker permit to a person who engages in the wholesale distribution of prescription drugs and does not take physical possession of any prescription drugs.

(f) Out-of-state prescription drug wholesale distributor permit.—An out-of-state prescription drug wholesale distributor permit is required for any person that is a wholesale distributor located outside this state, but within the United States or its territories, which engages in the wholesale distribution of prescription drugs into this state and which must be permitted by the department and comply with all the provisions required of a wholesale distributor under this part. An out-of-state prescription drug wholesale distributor that applies to the department for a new permit or the renewal of a permit must submit a bond of $100,000, or other equivalent means of security acceptable to the department, such as an irrevocable letter of credit or a deposit in a trust account or financial institution.
The purpose of the bond is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may assert a claim against such bond or security until 1 year after the permittee's license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later. The out-of-state prescription drug wholesale distributor must maintain at all times a license or permit to engage in the wholesale distribution of prescription drugs in compliance with laws of the state in which it is a resident. If the state from which the wholesale distributor distributes prescription drugs does not require a license to engage in the wholesale distribution of prescription drugs, the distributor must be licensed as a wholesale distributor as required by the federal act.

Retail pharmacy drug wholesale distributor permit. A retail pharmacy drug wholesale distributor is a retail pharmacy engaged in wholesale distribution of prescription drugs within this state under the following conditions:

1. The pharmacy must obtain a retail pharmacy wholesale distributor permit pursuant to this part and the rules adopted under this part.

2. The wholesale distribution activity does not exceed 30 percent of the total annual purchases of prescription drugs. If the wholesale distribution activity exceeds the 30-percent

maximum, the pharmacy must obtain a prescription drug wholesale distributor permit.

3. The transfer of prescription drugs that appear in any schedule contained in chapter 893 is subject to chapter 893 and the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

4. The transfer is between a retail pharmacy and another retail pharmacy, or a Modified Class II institutional pharmacy, or a health care practitioner licensed in this state and authorized by law to dispense or prescribe prescription drugs.

5. All records of sales of prescription drugs subject to this section must be maintained separate and distinct from other records and comply with the recordkeeping requirements of this part.

(h) Restricted prescription drug distributor permit.—

1. A restricted prescription drug distributor permit is required for:

a. Any person located in this state who engages in the distribution of a prescription drug, which distribution is not considered "wholesale distribution" under s. 499.003(48)(a).

b. Any person located in this state who engages in the receipt or distribution of a prescription drug in this state for the purpose of processing its return or its destruction if such person is not the person initiating the return, the prescription drug wholesale supplier of the person initiating the return, or the manufacturer of the drug.

c. A blood establishment located in this state which collects blood and blood components only from volunteer donors.
as defined in s. 381.06014 or pursuant to an authorized practitioner's order for medical treatment or therapy and engages in the wholesale distribution of a prescription drug not described in s. 499.003(48)(j) to a health care entity. A mobile blood unit operated by a blood establishment permitted under this sub-subparagraph is not required to be separately permitted. The health care entity receiving a prescription drug distributed under this sub-subparagraph must be licensed as a closed pharmacy or provide health care services at that establishment. The blood establishment must operate in accordance with s. 381.06014 and may distribute only:

(I) Prescription drugs indicated for a bleeding or clotting disorder or anemia;
(II) Blood-collection containers approved under s. 505 of the federal act;
(III) Drugs that are blood derivatives, or a recombinant or synthetic form of a blood derivative;
(IV) Prescription drugs that are identified in rules adopted by the department and that are essential to services performed or provided by blood establishments and authorized for distribution by blood establishments under federal law; or
(V) To the extent authorized by federal law, drugs necessary to collect blood or blood components from volunteer blood donors; for blood establishment personnel to perform therapeutic procedures under the direction and supervision of a licensed physician; and to diagnose, treat, manage, and prevent any reaction of a volunteer blood donor or a patient undergoing a therapeutic procedure performed under the direction and supervision of a licensed physician,

(i)(h) Complimentary drug distributor permit.—A person who applies for a permit as a restricted prescription drug distributor, or for the renewal of such a permit, must provide to the department the information required under s. 499.0121, but not those set forth in s. 499.01213 if the distribution occurs pursuant to sub-subparagraph 1.a. or sub-subparagraph 1.b.

3. A person who applies for a permit as a restricted prescription drug distributor, or for the renewal of such a permit, must provide to the department the information required under s. 499.012.

4. The department may adopt rules regarding the distribution of prescription drugs by hospitals, health care entities, charitable organizations, other persons not involved in wholesale distribution, and blood establishments, which rules are necessary for the protection of the public health, safety, and welfare.

(ii) Complimentary drug distributor permit.—A person who applies for a permit as a restricted prescription drug distributor, or for the renewal of such a permit, must provide to the department the information required under s. 499.0121, but not those set forth in s. 499.01213 if the distribution occurs pursuant to sub-subparagraph 1.a. or sub-subparagraph 1.b.
5. A veterinary prescription drug retail establishment must

sell a veterinary prescription drug in the original, sealed
manufacturer’s container with all labeling intact and legible.
The department may adopt by rule additional labeling
requirements for the sale of a veterinary prescription drug.

6. A veterinary prescription drug retail establishment must

comply with all of the wholesale distribution requirements of s.
499.0121.

7. Prescription drugs sold by a veterinary prescription

drug retail establishment pursuant to a practitioner’s order may
not be returned into the retail establishment’s inventory.

Veterinary prescription drug wholesale distributor
permit.—A veterinary prescription drug wholesale distributor
permit is required for any person that engages in the
distribution of veterinary prescription drugs in or into this
state. A veterinary prescription drug wholesale distributor that
also distributes prescription drugs subject to, defined by, or
described by s. 503(b) of the Federal Food, Drug, and Cosmetic
Act which it did not manufacture must obtain a permit as a
prescription drug wholesale distributor, an out-of-state
prescription drug wholesale distributor, or a limited
prescription drug veterinary wholesale distributor in lieu of
the veterinary prescription drug wholesale distributor permit. A
veterinary prescription drug wholesale distributor must comply
with the requirements for wholesale distributors under s.
499.0121, but not those set forth in s. 499.01212.

Limited prescription drug veterinary wholesale
distributor permit.—Unless engaging in the activities of and
permitted as a prescription drug manufacturer, nonresident
prescription drug manufacturer, prescription drug wholesale

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4. A limited prescription drug veterinary wholesale distributor, or out-of-state prescription drug wholesale distributor, a limited prescription drug veterinary wholesale distributor permit is required for any person who engages in the distribution of or into this state of veterinary prescription drugs and prescription drugs subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act under the following conditions:

1. The person is engaged in the business of wholesaling prescription and veterinary prescription drugs to persons:
   a. Licensed as veterinarians practicing on a full-time basis;
   b. Regularly and lawfully engaged in instruction in veterinary medicine;
   c. Regularly and lawfully engaged in law enforcement activities;
   d. For use in research not involving clinical use; or
   e. For use in chemical analysis or physical testing or for purposes of instruction in law enforcement activities, research, or testing.

2. No more than 30 percent of total annual prescription drug sales may be prescription drugs approved for human use which are subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act.

3. The person does not distribute in any jurisdiction prescription drugs subject to, defined by, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act to any person who is authorized to sell, distribute, purchase, trade, or use these drugs on or for humans.

4. A limited prescription drug veterinary wholesale distributor that applies to the department for a new permit or the renewal of a permit must submit a bond of $20,000, or other equivalent means of security acceptable to the department, such as an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to the Professional Regulation Trust Fund. The purpose of the bond is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee’s license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later.

5. A limited prescription drug veterinary wholesale distributor must maintain at all times a license or permit to engage in the wholesale distribution of prescription drugs in compliance with laws of the state in which it is a resident.

6. A limited prescription drug veterinary wholesale distributor must comply with the requirements for wholesale distributors under s. 499.0121 and 499.01212, except that a limited prescription drug veterinary wholesale distributor is not required to provide a pedigree paper as required by s. 499.01212 upon the wholesale distribution of a prescription drug to a veterinarian.

7. A limited prescription drug veterinary wholesale distributor may not return to inventory for subsequent wholesale distribution any prescription drug subject to, defined by, or
described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act which has been returned by a veterinarian.

8. A limited prescription drug veterinary wholesale distributor permit is not required for (a) intracompany sale or transfer of a prescription drug from an out-of-state establishment that is duly licensed to engage in the wholesale distribution of prescription drugs in its state of residence to a licensed limited prescription drug veterinary wholesale distributor in this state if both wholesale distributors conduct wholesale distributions of prescription drugs under the same business name. The recordkeeping requirements of s. 499.0121(6) and 499.0121(7) must be followed for this transaction.

(p) Over-the-counter drug manufacturer permit.—An over-the-counter drug manufacturer permit is required for any person that engages in the manufacture or repackaging of an over-the-counter drug.

1. An over-the-counter drug manufacturer may not possess or purchase prescription drugs.

2. A pharmacy is exempt from obtaining an over-the-counter drug manufacturer permit if it is operating in compliance with pharmacy practice standards as defined in chapter 465 and the rules adopted under that chapter.

3. An over-the-counter drug manufacturer must comply with all appropriate state and federal good manufacturing practices.

(q) Device manufacturer permit.—

1. A device manufacturer permit is required for any person that engages in the manufacture, repackaging, or assembly of medical devices for human use in this state, except that a permit is not required if:

CODING: Words underlined are deletions; words italicized are additions.
require a license to operate as a third party logistics provider, the third party logistics provider must be licensed as a third party logistics provider as required by the federal act. Each third party logistics provider permittee shall comply with s. the requirements for wholesale distributors under ss. 499.0121 and 499.01212, with the exception of those wholesale distributions described in s. 499.01212(3)(a), and other rules that the department requires.

(e) Health care clinic establishment permit. Effective January 1, 2009. A health care clinic establishment permit is required for the purchase of a prescription drug by a place of business at one general physical location that provides health care or veterinary services, which is owned and operated by a business entity that has been issued a federal employer tax identification number. For the purpose of this paragraph, the term "qualifying practitioner" means a licensed health care practitioner defined in s. 456.001, or a veterinarian licensed under chapter 474, who is authorized under the appropriate practice act to prescribe and administer a prescription drug.

1. An establishment must provide, as part of the application required under s. 499.012, designation of a qualifying practitioner who will be responsible for complying with all legal and regulatory requirements related to the purchase, recordkeeping, storage, and handling of the prescription drugs. In addition, the designated qualifying practitioner shall be the practitioner whose name, establishment

2. The health care clinic establishment must employ a qualifying practitioner at each establishment.

3. In addition to the remedies and penalties provided in this part, a violation of this chapter by the health care clinic establishment or qualifying practitioner constitutes grounds for discipline of the qualifying practitioner by the appropriate regulatory board.

4. The purchase of prescription drugs by the health care clinic establishment is prohibited during any period of time when the establishment does not comply with this paragraph.

5. A health care clinic establishment permit is not a pharmacy permit or otherwise subject to chapter 465. A health care clinic establishment that meets the criteria of a modified Class II institutional pharmacy under s. 465.019 is not eligible to be permitted under this paragraph.

6. This paragraph does not apply to the purchase of a prescription drug by a licensed practitioner under his or her license.

(3) A nonresident prescription drug manufacturer permit is not required for a manufacturer to distribute a prescription drug.
drug active pharmaceutical ingredient that it manufactures to a
prescription drug manufacturer permitted in this state in
limited quantities intended for research and development and not
for resale or human use other than lawful clinical trials and
biostudies authorized and regulated by federal law. A
manufacturer claiming to be exempt from the permit requirements
of this subsection and the prescription drug manufacturer
purchasing and receiving the active pharmaceutical ingredient
shall comply with the recordkeeping requirements of s.
499.0121(6), but not the requirements of s. 499.01212. The
prescription drug manufacturer purchasing and receiving the
active pharmaceutical ingredient shall maintain on file a record
of the FDA registration number; if available, the out-of-state
license, permit, or registration number; and, if available, a
copy of the most current FDA inspection report, for all
manufacturers from whom they purchase active pharmaceutical
ingredients under this section. The department shall define the
term “limited quantities” by rule, and may include the allowable
number of transactions within a given period of time and the
amount of prescription drugs distributed into the state for
purposes of this exemption. The failure to comply with the
requirements of this subsection, or rules adopted by the
department to administer this subsection, for the purchase of
prescription drug active pharmaceutical ingredients is a
violation of s. 499.005(14), and a knowing failure is a
violation of s. 499.0051(3). 499.0051(4).

(a) The immediate package or container of a prescription
drug active pharmaceutical ingredient distributed into the state
that is intended for research and development under this
subsection shall bear a label prominently displaying the
statement: “Caution: Research and Development Only—Not for
Manufacturing, Compounding, or Resale.”

(b) A prescription drug manufacturer that obtains a
prescription drug active pharmaceutical ingredient under this
subsection for use in clinical trials and or biostudies
authorized and regulated by federal law must create and maintain
records detailing the specific clinical trials or biostudies for
which the prescription drug active pharmaceutical ingredient was
obtained.

(4)(a) A permit issued under this part is not required to
distribute a prescription drug active pharmaceutical ingredient
from an establishment located in the United States to an
establishment located in this state permitted as a prescription
drug manufacturer under this part for use by the recipient in
preparing, deriving, processing, producing, or fabricating a
prescription drug finished dosage form at the establishment in
this state where the product is received under an approved and
otherwise valid New Drug Approval Application, Abbreviated New
Drug Application, New Animal Drug Application, or Therapeutic
Biologic Application, provided that the application, active
pharmaceutical ingredient, or finished dosage form has not been
withdrawn or removed from the market in this country for public
health reasons.

1. Any distributor claiming exemption from permitting
requirements pursuant to this paragraph shall maintain a
license, permit, or registration to engage in the wholesale
distribution of prescription drugs under the laws of the state
from which the product is distributed. If the state from which

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the prescription drugs are distributed does not require a license to engage in the wholesale distribution of prescription drugs, the distributor must be licensed as a wholesale distributor as required by the federal act.

2. Any distributor claiming exemption from permitting requirements pursuant to this paragraph and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient shall comply with the recordkeeping requirements of s. 499.0121(6), but not the requirements of s. 499.01212.

   (b) A permit issued under this part is not required to distribute limited quantities of a prescription drug that has not been repackaged from an establishment located in the United States to an establishment located in this state permitted as a prescription drug wholesale distributor under this part if such establishment is duly licensed and regulated by federal law for the purpose of distributing pharmaceutical ingredients to research, teaching, testing, and development or to a holder of a letter of exemption issued by the department under s. 499.03(4) for research, teaching, or testing. The department shall define "limited quantities" by rule and may include the allowable number of transactions within a given period of time and the amounts of prescription drugs distributed into the state for purposes of this exemption.

   1. Any distributor claiming exemption from permitting requirements pursuant to this paragraph shall maintain a license, permit, or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed. If the state from which the prescription drugs are distributed does not require a license to engage in the wholesale distribution of prescription drugs, the distributor must be licensed as a wholesale distributor as required by the federal act.

2. All purchasers and recipients of any prescription drugs distributed pursuant to this paragraph shall ensure that the products are not resold or used, directly or indirectly, on humans except in lawful clinical trials and biostudies authorized and regulated by federal law.

3. Any distributor claiming exemption from permitting requirements pursuant to this paragraph, and the purchaser and recipient of the prescription drug, shall comply with the recordkeeping requirements of s. 499.0121(6), but not the requirements of s. 499.01212.

   4. The immediate package or container of any active pharmaceutical ingredient distributed into the state that is intended for teaching, testing, research, and development shall bear a label prominently displaying the statement: "Caution: Research, Teaching, or Testing Only - Not for Manufacturing, Compounding, or Resale."

(c) An out-of-state prescription drug wholesale distributor permit is not required for an intracompany sale or transfer of a prescription drug from an out-of-state establishment that is duly licensed as a prescription drug wholesale distributor in its state of residence to a licensed prescription drug wholesale distributor in this state, if both wholesale distributors conduct wholesale distributions of prescription drugs under the same business name. The recordkeeping requirements of s. 499.0121(6) and 499.01212 must be followed for such transactions.

(d) Persons receiving prescription drugs from a source claimed to be exempt from permitting requirements under this paragraph are not required to have a permit issued under this part for receipt of such prescription drugs, provided that they meet the definition of "wholesale distributor" in s. 499.001(2).
subsection shall maintain on file:

1. A record of the FDA establishment registration number,
2. The resident state or federal license, registration, or permit that authorizes the source to distribute prescription drugs; drug wholesale distribution license, permit, or registration number, and
3. A copy of the most recent resident state or FDA inspection report, for all distributors and establishments from whom they purchase or receive prescription drugs under this subsection.

(e) All persons claiming exemption from permitting requirements pursuant to this subsection who engage in the distribution of prescription drugs within or into the state are subject to this part, including ss. 499.005 and 499.0051, and shall make available, within 48 hours, to the department on request all records related to any prescription drugs distributed under this subsection, including those records described in s. 499.051(4), regardless of the location where the records are stored.

(f) A person purchasing and receiving a prescription drug from a person claimed to be exempt from licensing requirements pursuant to this subsection shall report to the department in writing within 14 days after receiving any product that is misbranded or adulterated or that fails to meet minimum standards set forth in the official compendium or state or federal good manufacturing practices for identity, purity, potency, or sterility, regardless of whether the product is thereafter rehabilitated, quarantined, returned, or destroyed.

(g) The department may adopt rules to administer this subsection which are necessary for the protection of the public health, safety, and welfare. Failure to comply with the requirements of this subsection, or rules adopted by the department to administer this subsection, is a violation of s. 499.005(14), and a knowing failure is a violation of s. 499.0051(3).

(h) This subsection does not relieve any person from any requirement prescribed by law with respect to controlled substances as defined in the applicable federal and state laws.

(5) A prescription drug repackager permit issued under this part is not required for a restricted prescription drug distributor permit holder that is a health care entity to repack prescription drugs in this state for its own use or for distribution to hospitals or other health care entities in the state for their own use, pursuant to s. 499.003(48)(a)3. If:

(a) The prescription drug distributor notifies the department, in writing, of its intention to engage in repackaging under this exemption, 30 days before engaging in the repackaging of prescription drugs at the permitted establishment;

(b) The prescription drug distributor is under common control with the hospitals or other health care entities to which the prescription drug distributor is distributing prescription drugs. As used in this paragraph, “common control” means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;
(c) The prescription drug distributor repackages the
prescription drugs in accordance with current state and federal
good manufacturing practices; and
(d) The prescription drug distributor labels the
prescription drug it repackages in accordance with state and
federal laws and rules.

The prescription drug distributor is exempt from the product
registration requirements of s. 499.015 with regard to the
prescription drugs that it repackages and distributes under this
subsection. A prescription drug distributor that repackages and
distributes prescription drugs under this subsection to a not-
for-profit rural hospital, as defined in s. 395.602, is not
required to comply with paragraph (c) or paragraph (d), but must
provide to each health care entity for which it repackages, for
each prescription drug that is repackaged and distributed, the
information required by department rule for labeling
prescription drugs. The prescription drug distributor shall also
provide the additional current packaging and label information
for the prescription drug by hard copy or by electronic means.

Section 6. Section 499.012, Florida Statutes, is amended to
read:

499.012 Permit application requirements.—
(1)(a) A permit issued pursuant to this part may be issued
only to a natural person who is at least 18 years of age or to
an applicant that is not a natural person if each person who,
directly or indirectly, manages, controls, or oversees the
operation of that applicant is at least 18 years of age.
(b) An establishment that is a place of residence may not
receive a permit and may not operate under this part.
(c) A person that applies for or renews a permit to
manufacture or distribute prescription drugs may not use a name
identical to the name used by any other establishment or
licensed person authorized to purchase prescription drugs in
this state, except that a restricted drug distributor permit
issued to a health care entity will be issued in the name in
which the institutional pharmacy permit is issued and a retail
pharmacy drug wholesale distributor will be issued a permit in
the name of its retail pharmacy permit.
(d) A permit for a prescription drug manufacturer,
prescription drug repackager, prescription drug wholesale
distributor, limited prescription drug veterinary wholesale
distributor, or retail pharmacy drug wholesale distributor may
not be issued to the address of a health care entity or to a
pharmacy licensed under chapter 465, except as provided in this
paragraph. The department may issue a prescription drug
manufacturer permit to an applicant at the same address as a
licensed nuclear pharmacy, which is a health care entity, even
if the nuclear pharmacy holds a special sterile compounding
permit under chapter 465, for the purpose of manufacturing
prescription drugs used in positron emission tomography or other
radiopharmaceuticals, as listed in a rule adopted by the
department pursuant to this paragraph. The purpose of this
exemption is to assure availability of state-of-the-art
pharmaceuticals that would pose a significant danger to the
public health if manufactured at a separate establishment
address from the nuclear pharmacy from which the prescription
drugs are dispensed. The department may also issue a retail
pharmacy drug wholesale distributor permit to the address of a
community pharmacy licensed under chapter 465, even if the
community pharmacy holds a special sterile compounding permit
under chapter 465, as long as the community pharmacy which does
not meet the definition of a closed pharmacy in s. 499.003.
(e) A county or municipality may not issue an occupational
license for any licensing period beginning on or after October
1, 2001; for any establishment that requires a permit pursuant
to this part, unless the establishment exhibits a current permit
issued by the department for the establishment. Upon
presentation of the requisite permit issued by the department,
an occupational license may be issued by the municipality or
county in which application is made. The department shall
furnish to local agencies responsible for issuing occupational
licenses a current list of all establishments licensed pursuant
to this part.

(2) Notwithstanding subsection (6), a permitted person in
good standing may change the type of permit issued to that
person by completing a new application for the requested permit,
paying the amount of the difference in the permit fees if the
fee for the new permit is more than the fee for the original
permit, and meeting the applicable permitting conditions for the
new permit type. The new permit expires on the expiration date
of the original permit being changed; however, a new permit for
a prescription drug wholesale distributor, an out-of-state
prescription drug wholesale distributor, or a retail pharmacy
drug wholesale distributor shall expire on the expiration date
of the original permit or 1 year after the date of issuance of
the new permit, whichever is earlier. A refund may not be issued

if the fee for the new permit is less than the fee that was paid
for the original permit.

(3) (a) A written application for a permit or to renew a
permit must be filed with the department on forms furnished by
the department. The department shall establish, by rule, the
form and content of the application to obtain or renew a permit.
The applicant must submit to the department with the application
a statement that swears or affirms that the information is true
and correct.

(b) Upon a determination that 2 years have elapsed since
the department notified an applicant for permit, certification,
or product registration of a deficiency in the application and
that the applicant has failed to cure the deficiency, the
application shall expire. The determination regarding the 2-year
lapse of time shall be based on documentation that the
department notified the applicant of the deficiency in
accordance with s. 120.60.

(c) Information submitted by an applicant on an application
required pursuant to this subsection which is a trade secret, as
defined in s. 812.081, shall be maintained by the department as
trade secret information pursuant to s. 499.051(7).

(4) (a) Except for a permit for a prescription drug
wholesale distributor or an out-of-state prescription drug
wholesale distributor, an application for a permit must include:

1. The name, full business address, and telephone number of
the applicant;

2. All trade or business names used by the applicant;

3. The address, telephone numbers, and the names of contact
persons for each facility used by the applicant for the storage,
The applicant’s having been found guilty, regardless of...

Any other factors or qualifications the department considers relevant to and consistent with the public health and safety.
(a) The department shall adopt rules for the biennial renewal of permits; however, the department may issue up to a 4-year permit to selected permittees notwithstanding any other provision of law. Fees for such renewal may not exceed the fees caps set forth in s. 499.041 on an annualized basis as authorized by law.

(b) The department shall renew a permit upon receipt of the renewal application and renewal fee if the applicant meets the requirements established under this part and the rules adopted under this part.

(c) At least 90 days before the expiration date of a permit, the department shall forward a permit renewal notification to the permittee at the mailing address of the permitted establishment on file with the department. The permit renewal notification must state conspicuously the date on which the permit for the establishment will expire and that the establishment may not operate unless the permit for the establishment is renewed timely. A permit, unless sooner suspended or revoked, automatically expires two years after the last day of the anniversary month in which the permit was originally issued.

(d) A permit issued under this part may be renewed by making application for renewal on forms furnished by the department and paying the appropriate fees.

1. If a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor renewal application and fee are submitted and postmarked later than 45 days before the expiration date of the permit, the permit may be renewed only upon payment of a late renewal fee of $100, plus the required renewal fee.

2. If any other renewal application and fee are submitted and postmarked after the expiration date of the permit, the permit may be renewed only upon payment of a late renewal delinquent fee of $100, plus the required renewal fee, not later than 60 days after the expiration date.

3. A permittee who submits a renewal application in accordance with this paragraph may continue to operate under its permit, unless the permit is suspended or revoked, until final disposition of the renewal application.

4. Failure to renew a permit in accordance with this section precludes any future renewal of that permit. If a permit issued pursuant to this part has expired and cannot be renewed, before an establishment may engage in activities that require a permit under this part, the establishment must submit an application for a new permit, pay the applicable application fee, the initial permit fee, and all applicable penalties, and be issued a new permit by the department.

(6) A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or other transfer, voluntarily or involuntarily; nor is a permit valid for any establishment other than the establishment for which it was originally issued.

(a) A person permitted under this part must notify the department before making a change of address. The department shall set a change of location fee not to exceed $100.

(b) An application for a new permit is required when a
majority of the ownership or controlling interest of a permitted establishment is transferred or assigned or when a lessee agrees to undertake or provide services to the extent that legal liability for operation of the establishment will rest with the lessee. The application for the new permit must be made before the date of the sale, transfer, assignment, or lease.

2. A permittee that is authorized to distribute prescription drugs may transfer such drugs to the new owner or lessee under subparagraph 1. only after the new owner or lessee has been approved for a permit to distribute prescription drugs.

(c) If an establishment permitted under this part closes, the owner must notify the department in writing before the effective date of closure and must:

1. Return the permit to the department;
2. If the permittee is authorized to distribute prescription drugs, indicate the disposition of such drugs, including the name, address, and inventory, and provide the name and address of a person to contact regarding access to records that are required to be maintained under this part. Transfer of ownership of prescription drugs may be made only to persons authorized to possess prescription drugs under this part.

The department may revoke the permit of any person that fails to comply with the requirements of this subsection.

(7) A permit must be posted in a conspicuous place on the licensed premises.

(8) An application for a permit or to renew a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor submitted to the department must include:

(a) The name, full business address, and telephone number of the applicant.
(b) All trade or business names used by the applicant.
(c) The address, telephone numbers, and the names of contact persons for each facility used by the applicant for the storage, handling, and distribution of prescription drugs.
(d) The type of ownership or operation, such as a partnership, corporation, or sole proprietorship.
(e) The names of the owner and the operator of the establishment, including:

1. If an individual, the name of the individual.
2. If a partnership, the name of each partner and the name of the partnership.
3. If a corporation:
   a. The name, address, and title of each corporate officer and director.
   b. The name and address of the corporation, resident agent of the corporation, the resident agent’s address, and the corporation’s state of incorporation.
   c. The name and address of each shareholder of the corporation that owns 5 percent or more of the outstanding stock of the corporation.
4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.
5. If a limited liability company:
   a. The name and address of each member.
   b. The name and address of each manager.
   c. The name and address of the limited liability company.
the resident agent of the limited liability company, and the name of the state in which the limited liability company was organized.

(f) If applicable, the name and address of each affiliate of member of the affiliated group of which the applicant is a member.

(g) The applicant’s gross annual receipts attributable to prescription drug wholesale distribution activities for the previous tax year. For an application for a new permit, the estimated annual dollar volume of prescription drug sales of the applicant, the estimated annual percentage of the applicant’s total company sales that are prescription drugs, the applicable estimated annual total dollar volume of purchases of prescription drugs, and the applicant’s estimated annual total dollar volume of prescription drug purchases directly from manufacturers.

(ii) For an application to renew a permit, the total dollar volume of prescription drug sales in the previous year, the total dollar volume of prescription drug sales made in the previous 6 months, the percentage of total company sales that were prescription drugs in the previous year, the total dollar volume of purchases of prescription drugs in the previous year, and the total dollar volume of prescription drug purchases directly from manufacturers in the previous year.

Such portions of the information required pursuant to this paragraph which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051.

(h) The tax year of the applicant.

(i) A copy of the deed for the property on which applicant’s establishment is located, if the establishment is owned by the applicant, or a copy of the applicant’s lease for the property on which applicant’s establishment is located that has an original term of not less than 1 calendar year, if the establishment is not owned by the applicant.

(j) A list of all licenses and permits issued to the applicant by any other state which authorize the applicant to purchase or possess prescription drugs.

(k) The name of the manager of the establishment that is applying for the permit or to renew the permit, the next four highest ranking employees responsible for prescription drug wholesale operations for the establishment, and the name of all affiliated parties for the establishment, together with the personal information statement and fingerprints required pursuant to subsection (9) for each of such persons.

(l) The name of each of the applicant’s designated representatives as required by subsection (15), together with the personal information statement and fingerprints required pursuant to subsection (9) for each such person.

(m) Evidence of a surety bond in this state or any other state in the United States in the amount of $100,000. If the applicant is not a corporation or limited liability company, the specific language of the surety bond must include the State of Florida as a beneficiary, payable to the Professional Regulation Trust Fund. In lieu of the surety bond, the applicant may provide other equivalent security such as an
irrevocable letter of credit or a deposit in a trust account or financial institution payable to the Professional Regulation Trust Fund. The purpose of the bond or other security is to secure payment of any administrative penalties imposed by the department and any fees and costs incurred by the department regarding that permit which are authorized under state law and which the permittee fails to pay 30 days after the fine or costs become final. The department may make a claim against such bond or security until 1 year after the permittee’s license ceases to be valid or until 60 days after any administrative or legal proceeding authorized in this part which involves the permittee is concluded, including any appeal, whichever occurs later. For an applicant that is a secondary wholesale distributor, each of the following:

1. A personal background information statement containing the background information and fingerprints required pursuant to subsection (9) for each person named in the applicant’s response to paragraphs (k) and (l) and for each affiliated party of the applicant.

2. If any of the five largest shareholders of the corporation seeking the permit is a corporation, the name, address, and title of each corporate officer and director of each such corporation; the name and address of such corporation; the name of such corporation’s resident agent; each corporation’s resident agent’s address; and such corporation’s state of its incorporation; and the name and address of each shareholder of such corporation that owns 5 percent or more of the stock of such corporation.

3. The name and address of all financial institutions in

The department may accept an inspection by a third-party accreditation or inspection service which meets the satisfaction of the department. The department may recognize another state’s inspection of a wholesale distributor located in that state if such state’s laws are deemed to be substantially equivalent to the law of this state by the department. The department may accept an inspection by a third-party accreditation or inspection service which meets the standards of another state, regardless of the requirements of s. 499.051.
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1976 criteria set forth in department rule.
1977 (o) Any other relevant information that the department
1978 requires, including but not limited to, any information related
1979 to whether the applicant satisfies the definition of a primary
1980 wholesale distributor or a secondary wholesale distributor.
1981 (p) Documentation of the credentialing policies and
1982 procedures required by s. 499.0121(15).
1983 (9)(a) Each person required by subsection (8) or subsection
1984 (15) to provide a personal information statement and
1985 fingerprints shall provide the following information to the
1986 department on forms prescribed by the department:
1987 1. The person’s places of residence for the past 7 years.
1988 2. The person’s date and place of birth.
1989 3. The person’s occupations, positions of employment, and
1990 offices held during the past 7 years.
1991 4. The principal business and address of any business,
1992 corporation, or other organization in which each such office of
1993 the person was held or in which each such occupation or position
1994 of employment was carried on.
1995 5. Whether the person has been, during the past 7 years,
1996 the subject of any proceeding for the revocation of any license
1997 and, if so, the nature of the proceeding and the disposition of
1998 the proceeding.
1999 6. Whether, during the past 7 years, the person has been
2000 enjoined, temporarily or permanently, by a court of competent
2001 jurisdiction from violating any federal or state law regulating
2002 the possession, control, or distribution of prescription drugs,
2003 together with details concerning any such event.
2004 7. A description of any involvement by the person with any
2005 business, including any investments, other than the ownership of
2006 stock in a publicly traded company or mutual fund, during the
2007 past 4 years, which manufactured, administered, prescribed,
2008 distributed, or stored pharmaceutical products and any lawsuits
2009 in which such businesses were named as a party.
2010 8. A description of any felony criminal offense of which
2011 the person, as an adult, was found guilty, regardless of whether
2012 adjudication of guilt was withheld or whether the person pled
2013 guilty or nolo contendere. A criminal offense committed in
2014 another jurisdiction which would have been a felony in this
2015 state must be reported. If the person indicates that a criminal
2016 conviction is under appeal and submits a copy of the notice of
2017 appeal of that criminal offense, the applicant must, within 15
2018 days after the disposition of the appeal, submit to the
2019 department a copy of the final written order of disposition.
2020 9. A photograph of the person taken in the previous 100 days.
2021 10. A set of fingerprints for the person on a form and
2022 under procedures specified by the department, together with
2023 payment of an amount equal to the costs incurred by the
2024 department for the criminal record check of the person.
2025 11. The name, address, occupation, and date and place of
2026 birth for each member of the person’s immediate family who is 18
2027 years of age or older. As used in this subparagraph, the term
2028 “member of the person’s immediate family” includes the person’s
2029 spouse, children, parents, siblings, the spouses of the person’s
2030 children, and the spouses of the person’s siblings.
2031 12. Any other relevant information that the department
2032 requires.
2033

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CODING: Words underlined are additions; words italicized are deletions.
(b) The information required pursuant to paragraph (a) shall be provided under oath.

c) The department shall submit the fingerprints provided by a person for initial licensure to the Department of Law Enforcement for a statewide criminal record check and for forwarding to the Federal Bureau of Investigation for a national criminal record check of the person. The department shall submit the fingerprints provided by a person as a part of a renewal application to the Department of Law Enforcement for a statewide criminal record check, and for forwarding to the Federal Bureau of Investigation for a national criminal record check, for the initial renewal of a permit after January 1, 2004; for any subsequent renewal of a permit, the department shall submit the required information for a statewide and national criminal record check of the person. Any person who as a part of an initial permit application or initial permit renewal after January 1, 2004, submits to the department a set of fingerprints required for the criminal record check required in this paragraph are not be required to provide a subsequent set of fingerprints for a criminal record check to the department, if the person has undergone a criminal record check as a condition of the issuance of an initial permit or the initial renewal of a permit of an applicant after January 1, 2004. The department is authorized to contract with private vendors, or enter into interagency agreements, to collect electronic fingerprints where fingerprints are required for registration, certification, or the licensure process or where criminal history record checks are required.

(d) For purposes of applying for renewal of a permit under subsection (b) or certification under subsection (16), a person may submit the following in lieu of satisfying the requirements of paragraphs (a), (b), and (c):

1. A photograph of the individual taken within 180 days;

2. A copy of the personal information statement form most recently submitted to the department and a certification under oath, on a form specified by the department, that the individual has reviewed the previously submitted personal information statement form and that the information contained therein remains unchanged.

(10) The department may deny an application for a permit or refuse to renew a permit for a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor if:

(a) The applicant has not met the requirements for the permit.

(b) The management, officers, or directors of the applicant or any affiliated party are found by the department to be incompetent or untrustworthy.

(c) The applicant is so lacking in experience in managing a wholesale distributor as to make the issuance of the proposed permit hazardous to the public health.

(d) The applicant is so lacking in experience in managing a wholesale distributor as to jeopardize the reasonable promise of successful operation of the wholesale distributor.

(e) The applicant is lacking in experience in the distribution of prescription drugs.

(f) The applicant’s past experience in manufacturing or
(g) The applicant is affiliated directly or indirectly through ownership, control, or other business relations, with any person or persons whose business operations are or have been detrimental to the public health.

(h) The applicant, or any affiliated party, has been found guilty of or has pleaded guilty or nolo contendere to any felony or crime punishable by imprisonment for 1 year or more under the laws of the United States, any state, or any other country, regardless of whether adjudication of guilt was withheld.

(i) The applicant or any affiliated party has been charged with a felony in a state or federal court and the disposition of that charge is pending during the application review or renewal review period.

(j) The applicant has furnished false or fraudulent information or material in any application made in this state or any other state in connection with obtaining a permit or license to manufacture or distribute drugs, devices, or cosmetics.

(k) That a federal, state, or local government permit currently or previously held by the applicant, or any affiliated party, for the manufacture or distribution of any drugs, devices, or cosmetics has been disciplined, suspended, or revoked and has not been reinstated.

(l) The applicant does not possess the financial or physical resources to operate in compliance with the permit being sought, this chapter, and the rules adopted under this chapter.

(m) The applicant or any affiliated party receives, directly or indirectly, financial support and assistance from a person who was an affiliated party of a permittee whose permit was subject to discipline or was suspended or revoked, other than through the ownership of stock in a publicly traded company or a mutual fund.

(n) The applicant or any affiliated party receives, directly or indirectly, financial support and assistance from a person who has been found guilty of any violation of this part or chapter 465, chapter 501, or chapter 893, any rules adopted under this part or those chapters, any federal or state drug law, or any felony where the underlying facts related to drugs, regardless of whether the person has been pardoned, had her or his civil rights restored, or had adjudication withheld, other than through the ownership of stock in a publicly traded company or a mutual fund.

(o) The applicant for renewal of a permit under s. 499.01(2)(e) or (f) has not actively engaged in the wholesale distribution of prescription drugs, as demonstrated by the regular and systematic distribution of prescription drugs throughout the year as evidenced by not fewer than 12 wholesale distributions in the previous year and not fewer than three wholesale distributions in the previous 6 months.

(p) Information obtained in response to s. 499.01(2)(e) or (f) demonstrates it would not be in the best interest of the public health, safety, and welfare to issue a permit.

(q) The applicant does not possess the financial standing and business experience for the successful operation of the...
applicants.

(r) The applicant or any affiliated party has failed to
comply with the requirements for manufacturing or distributing
prescription drugs under this part, similar federal laws,
similar laws in other states, or the rules adopted under such
laws.

(11) Upon approval of the application by the department and
payment of the required fee, the department shall issue or renew
a prescription drug wholesale distributor or an out-of-state
prescription drug wholesale distributor permit to the applicant.

(12) For a permit for a prescription drug wholesale
distributor or an out-of-state prescription drug wholesale
distributor:

(a) The department shall adopt rules for the annual renewal
of permits. At least 30 days before the expiration of a permit,
the department shall forward a permit renewal notification and
renewal application to the prescription drug wholesale
distributor or out-of-state prescription drug wholesale
distributor at the mailing address of the permitted
establishment on file with the department. The permit renewal
notification must state conspicuously the date on which the
permit for the establishment will expire and that the
establishment may not operate unless the permit for the
establishment is renewed timely.

(b) A permit, unless sooner suspended or revoked,
automatically expires 1 year after the last day of the
anniversary month in which the permit was originally issued. A
permit may be renewed by making application for renewal on forms
furnished by the department and paying the appropriate fees. If

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CODING: Words stricken are deletions; words underlined are additions.
2. The pharmacy maintains its permit under chapter 465;

3. The consignor wholesale distributor, which has no legal authority to dispense prescription drugs, complies with all wholesaler distribution requirements of § 499.0121 and § 499.0122 with respect to the consigned drugs and maintains records documenting the transfer of title or other completion of the wholesale distribution of the consigned prescription drugs;

4. The distribution of the prescription drug is otherwise lawful under this chapter and other applicable law;

5. Open packages containing prescription drugs within a pharmacy are the responsibility of the pharmacy, regardless of how the drugs are titled; and

6. The pharmacy dispenses the consigned prescription drug in accordance with the limitations of its permit under chapter 465 or returns the consigned prescription drug to the consignor wholesale distributor. In addition, a person who holds title to prescription drugs may transfer the drugs to a person permitted or licensed to handle the reverse distribution or destruction of drugs. Any other distribution by and means of the consigned prescription drug by any person, not limited to the consignor wholesale distributor or consignee pharmacy, to any other person is prohibited.

(b) A wholesale distributor’s permit is not required for the one-time transfer of title of a pharmacy’s lawfully acquired prescription drug inventory by a pharmacy with a valid permit issued under chapter 465 to a consignor prescription drug wholesale distributor, permitted under this chapter, in accordance with a written consignment agreement between the pharmacy and that wholesale distributor if the permitted pharmacy and the permitted prescription drug wholesale distributor comply with all of the provisions of paragraph (a) and the prescription drugs continue to be within the permitted pharmacy’s inventory for dispensing in accordance with the limitations of the pharmacy permit under chapter 465. A consignor drug wholesale distributor may not use the pharmacy as a wholesale distributor through which it distributes the prescription drugs to other pharmacies. Nothing in this section is intended to prevent a wholesale distributor from obtaining this inventory in the event of nonpayment by the pharmacy.

(c) A separate establishment permit is not required when a permitted prescription drug wholesale distributor operates temporary transit storage facilities for the sole purpose of storage, for up to 16 hours, of a delivery of prescription drugs when the wholesale distributor was temporarily unable to complete the delivery to the recipient.

(d) The department shall require information from each wholesale distributor as part of the permit and renewal of such permit, as required under this section.

(13) Personel employed in wholesale distribution must have appropriate education and experience to enable them to perform their duties in compliance with state permitting requirements.

(14) The name of a permittee or establishment on a prescription drug wholesale distributor permit or an out-of-state prescription drug wholesale distributor permit may not include any indicia of attainment of any educational degree, any indicia that the permittee or establishment possesses a professional license, or any name or abbreviation that the
A wholesale distributor may not operate under a name that t
rtment determines is likely to cause confusion or mistake or
that the department determines is deceptive, including that of
any other entity authorized to purchase prescription drugs.

(a) Each establishment that is issued an initial or
renewal permit as a prescription drug wholesale distributor or
an out-of-state prescription drug wholesale distributor must
designate in writing to the department at least one natural
person to serve as the designated representative of the
wholesale distributor. Such person must have an active
certification as a designated representative from the
department.

(b) To be certified as a designated representative, a
natural person must:

1. Submit an application on a form furnished by the
department and pay the appropriate fees.
2. Be at least 18 years of age.
3. Have at least 2 years of verifiable full-time:
   a. Work experience in a pharmacy licensed in this state or
   another state, where the person’s responsibilities included, but
   were not limited to, recordkeeping for prescription drugs;
   b. Managerial experience with a prescription drug wholesale
   distributor licensed in this state or in another state; or
   c. Managerial experience with the United States Armed
   Forces, where the person’s responsibilities included, but were
   not limited to, recordkeeping, warehousing, distributing, or
   other logistics services pertaining to prescription drugs.
4. Receive a passing score of at least 75 percent on an
   examination given by the department regarding federal laws
governing distribution of prescription drugs and this part and

(e) A wholesale distributor must notify the department when
a designated representative leaves the employ of the wholesale
distributor. Such notice must be provided to the department
within 10 business days after the last day of designated
representative’s employment with the wholesale distributor.

(f) A wholesale distributor may not operate under a
 prescription drug wholesale distributor permit or an out-of-
state prescription drug wholesale distributor permit for more
than 10 business days after the designated representative leaves
the employ of the wholesale distributor, unless the wholesale
distributor employs another designated representative and
notifies the department within 10 business days of the identity
of the new designated representative.

Section 7. Section 499.01201, Florida Statutes, is amended
to read:

499.01201 Agency for Health Care Administration review and
use of statute and rule violation or compliance data.—
Notwithstanding any other provision of law to the
contrary, the Agency for Health Care Administration may not:
(1) Review or use any violation or alleged violation of s.
499.0121(6) or s. 499.01212, or any rules adopted under that
section those sections, as a ground for denying or withholding
any payment of a Medicaid reimbursement to a pharmacy licensed
under chapter 465; or
(2) Review or use compliance with s. 499.0121(6) or s.
499.01212, or any rules adopted under that section those sections, as the subject of any audit of Medicaid-related
records held by a pharmacy licensed under chapter 465.

Section 8. Paragraph (d) of subsection (4) and subsection
(6) of section 499.0121, Florida Statutes, are amended to read:
499.0121 Storage and handling of prescription drugs;
recordkeeping.—The department shall adopt rules to implement
this section as necessary to protect the public health, safety,
and welfare. Such rules shall include, but not be limited to,
requirements for the storage and handling of prescription drugs
and for the establishment and maintenance of prescription drug
distribution records.

(4) EXAMINATION OF MATERIALS AND RECORDS.—
(d) Upon receipt, a wholesale distributor must review
records required under this section for the acquisition of
prescription drugs for accuracy and completeness, considering
the total facts and circumstances surrounding the transactions
and the wholesale distributors involved. This includes
authenticating each transaction listed on a pedigree paper, as
defined in s. 499.003(37).

(6) RECORDKEEPING.—The department shall adopt rules that
require keeping such records of prescription drugs, including
active pharmaceutical ingredients, as are necessary for the
protection of the public health.

(a) Wholesale Distributors of prescription drugs and active
pharmaceutical ingredients must establish and maintain
inventories and records of all transactions regarding the
receipt and distribution or other disposition of prescription
drugs and active pharmaceutical ingredients. These records must
provide a complete audit trail from receipt to sale or other
disposition, be readily retrievable for inspection, and include,
at a minimum, the following information:

1. The source of the prescription drugs or active
pharmaceutical ingredients, including the name and principal
address of the seller or transferor, and the address of the
location from which the prescription drugs were shipped;

2. The name, principal address, and state license permit or
registration number of the person authorized to purchase
prescription drugs or active pharmaceutical ingredients;
3. The name, strength, dosage form, and quantity of the prescription drugs received and distributed or disposed of;

4. The dates of receipt and distribution or other disposition of the prescription drugs or active pharmaceutical ingredients; and

5. Any financial documentation supporting the transaction.

(b) Inventories and records must be made available for inspection and photocopying by authorized federal, state, or local officials for a period of 2 years following disposition of the drugs or 3 years after the creation of the records, whichever period is longer.

(c) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means must be readily available for authorized inspection during the retention period. Records that are kept at a central location outside of this state and that are not electronically retrievable must be made available for inspection within 2 working days after a request by an authorized official of a federal, state, or local law enforcement agency. Records that are maintained at a central location within this state must be maintained at an establishment that is permitted pursuant to this part and must be readily available.

(d) Each manufacturer or repackager of medical devices, over-the-counter drugs, or cosmetics must maintain records that include the name and principal address of the person who purchased the product.

499.03 Possession of certain drugs without prescriptions

Section 499.03, Florida Statutes, is amended to read:

499.03 Possession of certain drugs without prescriptions; registration of drugs, devices, and cosmetics; issuance of certificates of free sale.—

(a) When pedigree papers are required by this part, a wholesale distributor must maintain the pedigree papers separate and distinct from other records required under this part.

Section 9. Subsection (4) of section 499.015, Florida Statutes, is amended to read:

499.015 Registration of drugs, devices, and cosmetics; issuance of certificates of free sale.—

(4) Unless a registration is renewed, it expires 2 years after the last day of the month in which it was issued. Any product registration issued on or after July 1, 2016, shall expire on the same date as the manufacturer or repackager permit of the person seeking to register the product. If the first product registration issued to a person on or after July 1, 2016, expires less than 366 days after issuance, the fee for product registration shall be $15. If the first product registration issued to a person on or after July 1, 2016, expires more than 365 days after issuance, the fee for product registration shall be $30. The department may issue a stop-sale notice or order against a person that is subject to the requirements of this section and that fails to comply with this section within 31 days after the date the registration expires. The notice or order shall prohibit such person from selling or causing to be sold any drugs, devices, or cosmetics covered by this part until he or she complies with the requirements of this section.

Section 10. Subsection (1) of section 499.03, Florida Statutes, is amended to read:

499.03 Possession of certain drugs without prescriptions
unlawful; exemptions and exceptions.—
(1) A person may not possess, or possess with intent to
sell, dispense, or deliver, any habit-forming, toxic, harmful,
or new drug subject to s. 499.003(32), 499.003(33), or
prescription drug as defined in s. 499.003(40), 499.003(41),
unless the possession of the drug has been obtained by a valid
prescription of a practitioner licensed by law to prescribe the
drug. However, this section does not apply to the delivery of
such drugs to persons included in any of the classes named in
this subsection, or to the agents or employees of such persons,
for use in the usual course of their businesses or practices or
in the performance of their official duties, as the case may be;
nor does this section apply to the possession of such drugs by
those persons or their agents or employees for such use:
(a) A licensed pharmacist or any person under the licensed
pharmacist’s supervision while acting within the scope of the
licensed pharmacist’s practice;
(b) A licensed practitioner authorized by law to prescribe
prescription drugs or any person under the licensed
practitioner’s supervision while acting within the scope of the
licensed practitioner’s practice;
(c) A qualified person who uses prescription drugs for
lawful research, teaching, or testing, and not for resale;
(d) A licensed hospital or other institution that procures
such drugs for lawful administration or dispensing by
practitioners;
(e) An officer or employee of a federal, state, or local
government; or
(f) A person that holds a valid permit issued by the

Section 11. Paragraphs (i) through (p) of subsection (1) of
section 499.05, Florida Statutes, are amended to read:
499.05 Rules.—
(1) The department shall adopt rules to implement and
enforce this chapter with respect to:
(i) Additional conditions that qualify as an emergency
medical reason under s. 499.003(48)(b)2. 499.003(53)(b)1. or s. 499.82.
(j) Procedures and forms relating to the pedigree paper
requirement of s. 499.0121.
(k) The protection of the public health, safety, and
welfare regarding good manufacturing practices that
manufacturers and repackagers must follow to ensure the safety
of the products.
(l) Information required from each retail establishment
pursuant to s. 499.012(3) or s. 499.83(2)(c), including
requirements for prescriptions or orders.
(m) The recordkeeping, storage, and handling with
respect to each of the distributions of prescription drugs
specified in s. 499.003(48)(a)–(v), 499.003(53)(a)–(j) or s. 499.82(14).

Section 12. Subsection (2) of section 499.05, Florida Statutes, is
amended to read:
Alternative to compliance with s. 499.0121 for a
prescription drug in the inventory of a permitted prescription
drug wholesale distributor as of June 30, 2006, and the return
of a prescription drug purchased prior to July 1, 2006. The
department may specify time limits for such alternatives.

(m) Wholesale distributor reporting requirements of s.
(8)(a) The department shall adopt rules to permit the issuance of remedial, nondisciplinary citations. A citation shall be issued to the person alleged to have committed a violation and contain the person’s name, address, and license number, if applicable, a brief factual statement, the sections of the law allegedly violated, and the monetary assessment and or other remedial measures imposed. The citation must clearly designate as violable those violations for which there is no substantial threat to the public health, safety, or welfare.

(b) The department shall adopt rules designating violations for which a citation may be issued. The rules shall designate as violable those violations for which there is no substantial threat to the public health, safety, or welfare.

(c) The department is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to the citation.

(d) A citation must be issued within 12 months after the filing of the complaint that is the basis for the citation.

(e) Service of a citation may be made by personal service or certified mail, restricted delivery, to the person at the person’s last known address of record with the department or to the person’s Florida registered agent.

(f) The department has authority to, and shall adopt rules to, designate those violations for which a person is subject to the issuance of a citation and designate the monetary penalty to be paid.
Section 17. Paragraph (a) of subsection (1) of section 409.9201, Florida Statutes, is amended to read:

Paragraph (a) of subsection (1) of section 409.9201, Florida Statutes, is amended to read:

The applicant is not eligible for a permit or certification for any of the reasons enumerated in s. 499.012.
4. The applicant, permittee, or person certified under s. 499.012(15) demonstrates any of the conditions enumerated in s. 499.012.

5. The applicant, permittee, or person certified under s. 499.012(15) has committed any violation of this chapter.

Section 19. Subsection (1) of section 794.075, Florida Statutes, is amended to read:

794.075 Sexual predators; erectile dysfunction drugs.—
(1) A person may not possess a prescription drug, as defined in s. 499.003(40), for the purpose of treating erectile dysfunction if the person is designated as a sexual predator under s. 775.21.

Section 20. Paragraphs (d), (f), (i), and (j) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—
(3) OFFENSE SEVERITY RANKING CHART
(d) LEVEL 4

Florida Statute Felony Description
Statute Degree

316.192(3)(a) 2nd Driving at high speed or with siren and lights activated.
while fleeing or attempting to elude a law enforcement officer who is in a patrol vehicle with siren and lights activated.

499.0051(1) 3rd Failure to maintain or deliver transaction history, transaction information, or transaction statements pedigree papers.
499.0051(2) 3rd Failure to authenticate pedigree papers.
499.0051(5) 2nd Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1) 3rd Failure to register securities.
517.12(1) 3rd Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b) 3rd Battery of law enforcement officer, firefighter, etc.
784.074(1)(c) 3rd Battery of sexually violent predators facility staff.
784.075 3rd Battery on detention or commitment facility staff.
2644
784.078 3rd Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.

2645
784.08(2)(c) 3rd Battery on a person 65 years of age or older.

2646
784.081(3) 3rd Battery on specified official or employee.

2647
784.082(3) 3rd Battery by detained person on visitor or other detainee.

2648
784.083(3) 3rd Battery on code inspector.

2649
784.085 3rd Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

2650
787.03(1) 3rd Interference with custody; wrongly takes minor from appointed guardian.

2651
787.04(2) 3rd Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.

CODING: Words **stricken** are deletions; words **underlined** are additions.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>817.625(2)(a)</td>
<td>3rd Fraudulent use of scanning device or reencoder.</td>
</tr>
<tr>
<td>828.125(1)</td>
<td>2nd Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.</td>
</tr>
<tr>
<td>837.02(1)</td>
<td>3rd Perjury in official proceedings.</td>
</tr>
<tr>
<td>837.021(1)</td>
<td>3rd Make contradictory statements in official proceedings.</td>
</tr>
<tr>
<td>838.022</td>
<td>3rd Official misconduct.</td>
</tr>
<tr>
<td>839.13(2)(a)</td>
<td>3rd Falsifying records of an individual in the care and custody of a state agency.</td>
</tr>
<tr>
<td>839.13(2)(c)</td>
<td>3rd Falsifying records of the Department of Children and Families.</td>
</tr>
<tr>
<td>843.021</td>
<td>3rd Possession of a concealed handcuff key by a person in custody.</td>
</tr>
<tr>
<td>843.025</td>
<td>3rd Deprive law enforcement,</td>
</tr>
</tbody>
</table>

**CODING:** Words **stricken** are deletions; words **underlined** are additions.
correctional, or correctional probation officer of means of protection or communication.

843.15(1)(a) 3rd Failure to appear while on bail for felony (bond estreature or bond jumping).

847.0135(5)(c) 3rd Lewd or lascivious exhibition using computer; offender less than 18 years.

874.05(1)(a) 3rd Encouraging or recruiting another to join a criminal gang.

893.13(2)(a)1. 2nd Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).

914.14(2) 3rd Witnesses accepting bribes.

914.22(1) 3rd Force, threaten, etc., witness, victim, or informant.

914.23(2) 3rd Retaliation against a witness, victim, or informant, no bodily injury.

2683 918.12 3rd Tampering with jurors.

2684 934.215 3rd Use of two-way communications device to facilitate commission of a crime.

2685 2686 (f) LEVEL 6

2687 Florida Statute

2688 Felony

2689 Description

2690 Statute

2691 Degree

2692 Description

2693 Statute

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<table>
<thead>
<tr>
<th>Section</th>
<th>Degree</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>499.0051(3)</td>
<td>2nd</td>
<td>Knowing purchase or receipt of prescription drug from unauthorized person.</td>
</tr>
<tr>
<td>499.0051(4)</td>
<td>2nd</td>
<td>Knowing sale or transfer of prescription drug to unauthorized person.</td>
</tr>
<tr>
<td>2694</td>
<td>2nd</td>
<td>Taking firearm from law enforcement officer.</td>
</tr>
<tr>
<td>2695</td>
<td>2nd</td>
<td>Aggravated assault; deadly weapon without intent to kill.</td>
</tr>
<tr>
<td>784.021(1)(a)</td>
<td>3rd</td>
<td>Aggravated assault; intent to commit felony.</td>
</tr>
<tr>
<td>784.021(1)(b)</td>
<td>3rd</td>
<td>Aggravated assault; deadly weapon without intent to kill.</td>
</tr>
<tr>
<td>784.041</td>
<td>3rd</td>
<td>Felony battery; domestic battery by strangulation.</td>
</tr>
<tr>
<td>784.048(3)</td>
<td>3rd</td>
<td>Aggravated stalking; credible threat.</td>
</tr>
<tr>
<td>784.048(5)</td>
<td>3rd</td>
<td>Aggravated stalking of person under 16.</td>
</tr>
<tr>
<td>784.07(2)(c)</td>
<td>2nd</td>
<td>Aggravated assault on law enforcement officer.</td>
</tr>
<tr>
<td>784.074(1)(b)</td>
<td>2nd</td>
<td>Aggravated assault on sexually violent predators facility staff.</td>
</tr>
<tr>
<td>784.08(2)(b)</td>
<td>2nd</td>
<td>Aggravated assault on person 65 years of age or older.</td>
</tr>
<tr>
<td>784.081(2)</td>
<td>2nd</td>
<td>Aggravated assault on specified official or employee.</td>
</tr>
<tr>
<td>784.082(2)</td>
<td>2nd</td>
<td>Aggravated assault by detained person on visitor or other detainee.</td>
</tr>
<tr>
<td>784.083(2)</td>
<td>2nd</td>
<td>Aggravated assault on code inspector.</td>
</tr>
<tr>
<td>787.02(2)</td>
<td>3rd</td>
<td>False imprisonment; restraining with purpose other than those in s. 787.01.</td>
</tr>
<tr>
<td>790.115(2)(d)</td>
<td>2nd</td>
<td>Discharging firearm or weapon on school property.</td>
</tr>
<tr>
<td>790.161(2)</td>
<td>2nd</td>
<td>Make, possess, or throw destructive device with intent to do bodily harm or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>damage property.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Section</th>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>790.164(1)</td>
<td>2nd</td>
<td>False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.</td>
</tr>
<tr>
<td>790.19</td>
<td>2nd</td>
<td>Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.</td>
</tr>
<tr>
<td>794.011(8)(a)</td>
<td>3rd</td>
<td>Solicitation of minor to participate in sexual activity by custodial adult.</td>
</tr>
<tr>
<td>794.05(1)</td>
<td>2nd</td>
<td>Unlawful sexual activity with specified minor.</td>
</tr>
<tr>
<td>800.04(5)(d)</td>
<td>3rd</td>
<td>Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.</td>
</tr>
<tr>
<td>800.04(6)(b)</td>
<td>2nd</td>
<td>Lewd or lascivious conduct; offender 18 years of age or older.</td>
</tr>
<tr>
<td>806.031(2)</td>
<td>2nd</td>
<td>Arson resulting in great bodily harm to firefighter or any other person.</td>
</tr>
<tr>
<td>810.02(3)(c)</td>
<td>2nd</td>
<td>Burglary of occupied structure; unarmed; no assault or battery.</td>
</tr>
<tr>
<td>810.145(8)(b)</td>
<td>2nd</td>
<td>Video voyeurism; certain minor victims; 2nd or subsequent offense.</td>
</tr>
<tr>
<td>812.014(2)(b)</td>
<td>2nd</td>
<td>Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.</td>
</tr>
<tr>
<td>812.014(6)</td>
<td>2nd</td>
<td>Theft; property stolen $3,000 or more; coordination of others.</td>
</tr>
<tr>
<td>812.015(9)(a)</td>
<td>2nd</td>
<td>Retail theft; property stolen $300 or more; second or subsequent conviction.</td>
</tr>
<tr>
<td>812.015(9)(b)</td>
<td>2nd</td>
<td>Retail theft; property stolen $3,000 or more; coordination of others.</td>
</tr>
<tr>
<td>812.13(2)(c)</td>
<td>2nd</td>
<td>Robbery, no firearm or other weapon (strong-arm robbery).</td>
</tr>
<tr>
<td>817.4821(5)</td>
<td>2nd</td>
<td>Possess cloning paraphernalia with intent to create cloned cellular telephones.</td>
</tr>
</tbody>
</table>
825.102(1) 3rd Abuse of an elderly person or disabled adult.

825.102(3)(c) 3rd Neglect of an elderly person or disabled adult.

825.1025(3) 3rd Lewd or lascivious molestation of an elderly person or disabled adult.

825.103(3)(c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than $10,000.

827.03(2)(c) 3rd Abuse of a child.

827.03(2)(d) 3rd Neglect of a child.

827.071(2) & (3) 2nd Use or induce a child in a sexual performance, or promote or direct such performance.

836.05 2nd Threats; extortion.

836.10 2nd Written threats to kill or do bodily injury.

843.12 3rd Aids or assists person to escape.

847.011 3rd Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

847.012 3rd Knowingly using a minor in the production of materials harmful to minors.

847.0135(2) 3rd Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

914.23 2nd Retaliation against a witness, victim, or informant, with bodily injury.

944.35(3)(a)2. 3rd Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

944.40 2nd Escapes.

944.46 3rd Harboring, concealing, aiding
<table>
<thead>
<tr>
<th>Statute</th>
<th>Degree</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>316.193</td>
<td>1st</td>
<td>DUI manslaughter; failing to render aid or give information.</td>
</tr>
<tr>
<td>327.35</td>
<td>1st</td>
<td>BUI manslaughter; failing to render aid or give information.</td>
</tr>
<tr>
<td>409.920</td>
<td>1st</td>
<td>Medicaid provider fraud; $50,000 or more.</td>
</tr>
<tr>
<td>499.0051(8)</td>
<td>1st</td>
<td>Knowing sale or purchase of contraband prescription drugs</td>
</tr>
</tbody>
</table>

**CODING**: Words **stricken** are deletions; words **underlined** are additions.
782.04(3) 1st,PBL Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.

782.051(1) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

782.07(2) 1st Aggravated manslaughter of an elderly person or disabled adult.

787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or reward or as a shield or hostage.

787.01(1)(a)2. 1st,PBL Kidnapping with intent to commit or facilitate commission of any felony.

787.01(1)(a)4. 1st,PBL Kidnapping with intent to interfere with performance of any governmental or political function.

787.02(3)(a) 1st,PBL False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

787.06(3)(c)1. 1st Human trafficking for labor and services of an unauthorized alien child.

787.06(3)(d) 1st Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.

787.06(3)(f)1. 1st,PBL Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
588.161 1st Attempted capital destructive device offense.

2767

790.166(2) 1st,PBL Possessing, selling, using, or attempting to use a weapon of mass destruction.

2768

794.011(2) 1st Attempted sexual battery; victim less than 12 years of age.

2769

794.011(2) Life Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.

2770

794.011(4)(a) 1st,PBL Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.

2771

794.011(4)(b) 1st Sexual battery, certain circumstances; victim and offender 18 years of age.

2772

794.011(4)(c) 1st Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.

2773

794.011(4)(d) 1st,PBL Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.

2774

794.011(8)(b) 1st,PBL Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.

2775

794.08(2) 1st Female genital mutilation; victim younger than 18 years of age.

2776

800.04(5)(b) Life Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
<table>
<thead>
<tr>
<th>Section</th>
<th>2777</th>
<th>Florida Senate - 2016 CS for SB 1604</th>
</tr>
</thead>
<tbody>
<tr>
<td>812.13(2)(a)</td>
<td>1st, PBL</td>
<td>Robbery with firearm or other deadly weapon.</td>
</tr>
<tr>
<td>812.133(2)(a)</td>
<td>1st, PBL</td>
<td>Carjacking; firearm or other deadly weapon.</td>
</tr>
<tr>
<td>812.135(2)(b)</td>
<td>1st</td>
<td>Home-invasion robbery with weapon.</td>
</tr>
<tr>
<td>817.535(3)(b)</td>
<td>1st</td>
<td>Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Section</th>
<th>2780</th>
<th>Florida Senate - 2016 CS for SB 1604</th>
</tr>
</thead>
<tbody>
<tr>
<td>817.535(4)(a)2.</td>
<td>1st</td>
<td>Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.</td>
</tr>
<tr>
<td>817.535(5)(b)</td>
<td>1st</td>
<td>Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.</td>
</tr>
</tbody>
</table>

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<tr>
<th>Section</th>
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</tr>
</thead>
<tbody>
<tr>
<td>812.13(2)(a)</td>
<td>1st, PBL</td>
</tr>
<tr>
<td>812.133(2)(a)</td>
<td>1st, PBL</td>
</tr>
<tr>
<td>812.135(2)(b)</td>
<td>1st</td>
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<td>817.535(3)(b)</td>
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<td>1st, PBL</td>
</tr>
<tr>
<td>812.135(2)(b)</td>
<td>1st</td>
</tr>
<tr>
<td>817.535(3)(b)</td>
<td>1st</td>
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</tbody>
</table>

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</thead>
<tbody>
<tr>
<td>817.535(4)(a)2.</td>
<td>1st</td>
</tr>
<tr>
<td>817.535(5)(b)</td>
<td>1st</td>
</tr>
</tbody>
</table>
or injure another person.

2795 893.135 1st Trafficking in methaqualone, more than 25 kilograms.

2796 893.135 1st Trafficking in amphetamine, more than 200 grams.

2797 893.135 1st Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.

2798 893.135 1st Trafficking in 1,4-Butanediol, 10 kilograms or more.

2799 893.135 1st Trafficking in phenethylamines, 400 grams or more.

2800 896.101(5)(c) 1st Money laundering, financial instruments totaling or exceeding $100,000.

2801 896.104(4)(a)3. 1st Structuring transactions to evade reporting or
<table>
<thead>
<tr>
<th>Statute</th>
<th>Degree</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>499.0051(9)</td>
<td>1st</td>
<td>Knowing sale or purchase of contraband prescription drugs resulting in death.</td>
</tr>
<tr>
<td>499.0051(10)</td>
<td>1st</td>
<td></td>
</tr>
<tr>
<td>782.04(2)</td>
<td>1st,PBL</td>
<td>Unlawful killing of human; act is homicide, unpremeditated.</td>
</tr>
<tr>
<td>782.07(3)</td>
<td>1st</td>
<td>Aggravated manslaughter of a child.</td>
</tr>
<tr>
<td>787.01(1)(a)3.</td>
<td>1st,PBL</td>
<td>Kidnapping; inflict bodily harm upon or terrorize victim.</td>
</tr>
<tr>
<td>787.01(3)(a)</td>
<td>Life</td>
<td>Kidnapping; child under age 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.</td>
</tr>
<tr>
<td>794.011(3)</td>
<td>Life</td>
<td>Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.</td>
</tr>
<tr>
<td>812.135(2)(a)</td>
<td>1st,PBL</td>
<td>Home-invasion robbery with firearm or other deadly weapon.</td>
</tr>
<tr>
<td>876.32</td>
<td>1st</td>
<td>Treason against the state.</td>
</tr>
</tbody>
</table>
Section 21. This act shall take effect July 1, 2016.
THE FLORIDA SENATE
APPEARANCE RECORD

02/11/16
Meeting Date

1604
Bill Number (if applicable)

__3991__
Amendment Barcode (if applicable)

Topic __________________________________________________________

Name  David Mica Jr.

Job Title  Director of Office of Legislative Affairs

Address  1940 N. Monroe St.

Tallahassee  FL  32399

Phone  850-717-1848

Email  David.Mica@myfloridalogic

Speaking:  ☑ For  ☐ Against  ☐ Information

Waive Speaking:  ☐ In Support  ☐ Against
(The Chair will read this information into the record.)

Representing ___________________________________________

DBP

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 (10/14/14)
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: 2/11/16

Bill Number (if applicable): SB 1604

Amendment Barcode (if applicable): 356636

Topic: Drugs, Devices & Cosmetics

Name: Robert Beck

Job Title: 

Address: 205 S. Adams

Street: Tallahassee

City: FL

State: 32301

Zip: Phone: 850 766 1410

Email: Robert@adamsstadvocate.com

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against

(The Chair will read this information into the record.)

Representing: FL Pharmacy Association

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

This form is part of the public record for this meeting.
To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 26, 2016

I respectfully request that Senate Bill #1604, relating to Drugs, Devices, and Cosmetics, be placed on the:

☐ committee agenda at your earliest possible convenience.
☑ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21
I. Summary:

PCS/SB 7050 revises duties of the Agency for State Technology (AST) and requires the AST to develop guidelines and policies for state agencies regarding information technology and cybersecurity.

Subject to an annual appropriation, state agencies are required to:
- Conduct risk assessments administered by a third party,
- Establish computer security incident response teams and procedures to respond to suspected technology security incidents, and
- Provide cyber security training to employees.

The AST’s Technology Advisory Council is required to collaborate with the State Board of Education in adopting a unified state plan on Science, Technology, Education and Mathematics (STEM) education and the Florida Center for Cybersecurity on various goals related to cybersecurity.

The bill appropriates $650,000 of nonrecurring funds and $50,000 of recurring funds from the General Revenue Fund to the AST to conduct training exercises in coordination with the Florida National Guard, and $12,000,000 from the General Revenue Fund to implement this act.

The bill is effective July 1, 2016.
II. **Present Situation:**

**Agency for State Technology**

The AST was created on July 1, 2014.\(^1\) The executive director of the AST is appointed by the Governor and confirmed by the Senate. The duties and responsibilities include:\(^2\)

- Developing and publishing information technology (IT) policy for management of the state’s IT resources.
- Establishing and publishing IT architecture standards.
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects.
- Performing project oversight on all state IT projects with total costs of $10 million or more.
- Identifying opportunities for standardization and consolidation of IT services that support common business functions and operations.
- Establishing best practices for procurement of IT products in collaboration with DMS.
- Participating with the DMS in evaluating, conducting and negotiating competitive solicitations for state term contracts for IT commodities, consultant services, or staff augmentation contractual services.
- Collaborating with the DMS in IT resource acquisition planning.
- Developing standards for IT reports and updates.
- Upon request, assisting state agencies in development of IT related legislative budget requests.
- Conducting annual assessments of state agencies to determine compliance with IT standards and guidelines developed by the AST.
- Providing operational management and oversight of the state data center.
- Recommending other IT services that should be designed, delivered, and managed as enterprise IT services.
- Recommending additional consolidations of agency data centers or computing facilities into the state data center.
- In consultation with state agencies, proposing a methodology for identifying and collecting current and planned IT expenditure data at the state agency level.
- Performing project oversight on any cabinet agency IT project that has a total project cost of $25 million or more and impacts one or more other agencies.
- Consulting with departments regarding risks and other effects for IT projects implemented by an agency that must be connected to or accommodated by an IT system administered by a cabinet agency.
- Reporting annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding state IT standards or policies that conflict with federal regulations or requirements.

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\(^1\) Chapter 2014-221, Laws of Florida.

\(^2\) Section 282.0051, F.S.
Technology Advisory Council

The Technology Advisory Council, consisting of seven members, is established within the AST: four members of the council are appointed by the Governor, two of which must be from the private sector. The President of the Senate and the Speaker of the House of Representatives each appoint one member of the council. The Attorney General, the Commissioner of Agriculture and Consumer Services, and the Chief Financial Officer jointly appoint one member by agreement of a majority of these officers.

The Technology Advisory Council considers and makes recommendations to the Executive Director on such matters as enterprise information technology policies, standards, services, and architecture. The council may also identify and recommend opportunities for the establishment of public-private partnerships when considering technology infrastructure and services in order to accelerate project delivery and provide a source of new or increased project funding. The Executive Director consults with the council with regard to executing the duties and responsibilities of the agency related to statewide information technology strategic planning and policy.

Cybercrime Office, Florida Department of Law Enforcement

The Cybercrime Office within the Florida Department of Law Enforcement (FDLE) was established in 2011 with the functions and personnel of the Department of Legal Affairs Cybercrime Office transferred to FDLE. A cybercrime office has existed within FDLE since 1998. Some of the Cybercrime Office duties include:

- Monitoring state information technology resources and providing analysis on information technology security incidents, threats, and breaches;
- Investigating violations of state law pertaining to information technology security incidents and assisting in incident response and recovery;
- Providing security awareness training and information to state agency employees concerning cybersecurity, online sexual exploitation of children, and security risks, and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the AST; and
- Consulting with the AST in the adoption of rules relating to the information technology security provisions.

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3 Section 20.61(3), F.S.  
4 Section 20.61(3)(a), F.S.  
5 Id.  
6 Section 20.61(3)(b), F.S.  
7 Chapter 2011-132, Laws of Florida.  
8 Analysis for HB 5401 by the House Appropriations Committee (July 6, 2011)(copy on file with the Governmental Oversight and Accountability Committee).  
9 Section 943.0415, F.S.
Unified State Plan for Science, Technology, Engineering, and Mathematics

Section 1001.03(17), F.S., requires the State Board of Education, in consultation with the Board of Governors and the Department of Economic Opportunity, to adopt a unified state plan to improve K-20 Science, Technology, Engineering, and Mathematics (STEM) education and prepare students for high-skill, high-wage, and high-demand employment in STEM and STEM-related fields.

Florida Center for Cybersecurity

The Florida Center for Cybersecurity was established in 2013 when the Legislature required the Board of Governors to submit a report to the Legislature and the Governor that provided a plan for the creation of a Florida Center for Cybersecurity to be located at the University of South Florida.10

The goals of the Florida Center for Cybersecurity are to:
- Position Florida as the national leader in cybersecurity and its related workforce through education, research, and community engagement;
- Assist in the creation of jobs in the state’s cybersecurity industry and enhance the existing cybersecurity workforce;
- Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training;
- Seek out partnerships with major military installations to assist, when possible, in homeland cybersecurity defense initiatives; and
- Attract cybersecurity companies to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.11

III. Effect of Proposed Changes:

Section 1 amends s. 20.61, F.S., to revise the membership of the Technology Advisory Council and requires that at least one of the four members appointed by the Governor be a cybersecurity expert. The bill also requires that the Technology Advisory Council, in coordination with the Florida Center for Cybersecurity, identify and recommend STEM training opportunities. These opportunities are for the establishment of cutting-edge educational and training programs for students consistent with the unified state STEM plan, in order to increase the cybersecurity workforce in the state, and to prepare cybersecurity professionals to possess a wide range of expertise.

Section 2 amends s. 282.318, F.S., to require the AST to establish standards and processes consistent with best practices for both information technology security and cybersecurity and to adopt rules that mitigate risks.

This section requires the AST to develop and publish guidelines and processes in its information technology security framework provided to state agencies for:

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10 Chapter 2013-41, Laws of Florida. Also, see s. 1004.444, F.S.
11 Section 1004.444(2), F.S.
• Completing risk assessments administered by a third party and submitting completed assessments to the AST.
• Establishing a computer security incident response team to respond to suspected information technology security incidents and the timeframe for convening a team to determine an appropriate response.
• Establishing an information technology security incident reporting process, to include a procedure for notification of the AST and Cybercrime Office of the Florida Department of Law Enforcement (FDLE). The notification procedure must provide for a tiered reporting framework with incidents of critical impact reported upon discovery, incidents of high impact reported within four hours of discovery, and incidents of low impact reported within five business days of discovery.
• Incorporating lessons learned through detection and response activities into agency response plans to continuously improve organizational response activities.
• Providing all state agency employees with information technology security and cybersecurity awareness education and training within 30 days after commencing employment.

In collaboration with the Cybercrime Office of the FDLE, the AST’s training requirements are revised to require at least annual training on cybersecurity threats, trends, and best practices for state agency information security managers and computer security incident response team members.

This section also requires the AST, in collaboration with relevant partners and the Florida Center for Cybersecurity, to develop and establish a cutting-edge internship or work-study program in STEM to produce a more cybersecurity skilled state workforce.

The bill further requires that each state agency’s information security manager establish a computer security incident response team to respond to suspected computer security incidents. The computer security incident response team members must convene as soon as practicable upon notice of a suspected security incident and determine an appropriate response. The response would include taking action to prevent the expansion or recurrence of an incident, mitigating the effects of an incident, and eradicating an incident. The newly identified risks must be mitigated or documented as an accepted risk by computer security incident response team members.

The bill specifies mobile devices and print environments as information technology resources that will be included in the comprehensive risk assessment.

The bill requires state agencies to:
• Conduct a risk assessment, subject to an annual legislative appropriation, by July 31, 2017, that is administered by a third party consistent with guidelines and processes prescribed by the AST. Additional risk assessments must be completed periodically.
• Develop and update written internal policies and procedures for reporting information technology security incidents and breaches to the Cybercrime Office of the FDLE and the AST to include notification procedures and reporting timeframes for information technology security incidents and breaches.
• Provide information technology security and cybersecurity awareness training to all state agency employees in the first 30 days after commencing employment for attainment of an
appropriate level of cyber literacy. State agencies must ensure that privileged users, third-party stakeholders, senior executives, and physical and information security personnel understand their roles and responsibilities.

- Provide training, in collaboration with the Cybercrime Office of the FDLE, at least annually, on cybersecurity threats, trends, and best practices to computer security incident response team members.
- Develop notification procedures for reporting information technology security incidents.
- Improve organizational response activities by incorporating lessons learned from current and previous detection and response activities into response plans.

Section 3 amends s. 1001.03, F.S., to include the Technology Advisory Council as one of the entities that consults with the State Board of Education in the adoption of a unified state plan to improve K-20 STEM education and prepare students for employment in STEM and STEM-related fields.

Section 4 amends s. 1004.444, F.S., to require the Florida Center for Cybersecurity to coordinate with the Technology Advisory Council in pursuit of certain goals.

Section 5 appropriates for Fiscal Year 2016-2017, the sums of $650,000 in nonrecurring funds and $50,000 in recurring funds from the General Revenue Fund to the AST to conduct training exercises in coordination with the Florida National Guard.

Section 6 appropriates for Fiscal Year 2016-2017, the sum of $12,000,000 from the General Revenue Fund to the AST to implement this act.

Section 7 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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:

Indeterminate. Firms providing third party risk assessments to state agencies will see an increase in revenues.

C. Government Sector Impact:

The bill appropriates the following amounts for Fiscal Year 2016-2017:
- $650,000 non-recurring from the General Revenue Fund to the AST to conduct training exercises with the Florida National Guard;
- $50,000 recurring from the General Revenue Fund to the AST to conduct training exercises with the Florida National Guard; and
- $12 million from the General Revenue Fund to the AST to implement the provisions of this bill (presumably the risk assessments conducted are for the state agencies).

VI. Technical Deficiencies:

Section 6 does not specify whether the $12 million appropriation from the General Revenue Fund is from a recurring or nonrecurring appropriation.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 20.61, 282.318, 1001.03, and 1004.444 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.)

Recommended CS by Appropriations Subcommittee on General Government on February 11, 2016:
The CS specifically includes mobile devices and print environments as information technology resources to be included in the comprehensive risk assessment.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
Appropriations Subcommittee on General Government (Altman) recommended the following:

**Senate Amendment**

Delete line 228 and insert:

information, and information technology resources, including mobile devices and print environments, of the agency.
By the Committee on Governmental Oversight and Accountability

585-02231-16

A bill to be entitled
An act relating to information technology security;
amending s. 20.61, F.S.; revising the membership of the Technology Advisory Council to include a cybersecurity expert; requiring the council, in coordination with the Florida Center for Cybersecurity, to identify and recommend STEM training opportunities; amending s. 282.318, F.S.; revising duties of the Agency for State Technology; providing for administration of a third-party risk assessment; providing for the establishment of computer security incident response teams within state agencies; establishing procedures for reporting information technology security incidents; providing for continuously updated agency incident response plans; providing for information technology security and cybersecurity awareness training; providing for the establishment of a collaborative STEM program for cybersecurity workforce development; establishing computer security incident response team responsibilities; requiring each state agency head to conduct a third-party administered risk assessment; establishing notification procedures and reporting timelines for an information technology security incident or breach; amending s. 1001.03, F.S.; revising entities directed to adopt a unified state plan for K-20 STEM education to include the Technology Advisory Council; amending s. 1004.444, F.S.; requiring the Florida Center for Cybersecurity to coordinate with the Technology Advisory Council; providing appropriations; providing an effective date.

Section 1. Subsection (3) of section 20.61, Florida Statutes, is amended to read:

(3) The Technology Advisory Council, consisting of seven members, is established within the Agency for State Technology and shall be maintained pursuant to s. 20.052. Four members of the council shall be appointed by the Governor, two of whom must be from the private sector and one of whom must be a cybersecurity expert. The President of the Senate and the Speaker of the House of Representatives shall each appoint one member of the council. The Attorney General, the Commissioner of Agriculture and Consumer Services, and the Chief Financial Officer shall jointly appoint one member by agreement of a majority of these officers. Upon initial establishment of the council, two of the Governor’s appointments shall be for 2-year terms. Thereafter, all appointments shall be for 4-year terms. (a) The council shall consider and make recommendations to the executive director on such matters as enterprise information technology policies, standards, services, and architecture. The council may also identify and recommend opportunities for the establishment of public-private partnerships when considering...
technology infrastructure and services in order to accelerate project delivery and provide a source of new or increased project funding.

(b) The executive director shall consult with the council with regard to executing the duties and responsibilities of the agency related to statewide information technology strategic planning and policy.

(c) The council shall coordinate with the Florida Center for Cybersecurity to identify and recommend opportunities for establishing cutting-edge educational and training programs in science, technology, engineering, and mathematics (STEM) for students, consistent with the unified state plan adopted pursuant to s. 1001.03(17); increasing the cybersecurity workforce in the state; and preparing cybersecurity professionals to possess a wide range of expertise.

(d) The council shall be governed by the Code of Ethics for Public Officers and Employees as set forth in part III of chapter 112, and each member must file a statement of financial interests pursuant to s. 112.3145.

Section 2. Section 282.318, Florida Statutes, is amended to read:

282.318 Security of data and information technology.—

(1) This section may be cited as the “Information Technology Security Act.”

(2) As used in this section, the term “state agency” has the same meaning as provided in s. 282.0041, except that the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services.

CODING: Words underlined are additions.
5. Identifying protection procedures to manage the protection of an agency’s information, data, and information technology resources.

6. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

7. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

8. Establishing a computer security incident response team to respond to suspected information technology security incidents, including breaches of personal information containing confidential or exempt data. An agency’s computer security incident response team must convene as soon as practicable upon notice of a suspected security incident and shall determine the appropriate response.

9. Recovering information and data in response to an information technology security incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

10. Establishing an information technology security incident reporting process, which must include a procedure for notification of the Agency for State Technology and the Cybercrime Office of the Department of Law Enforcement. The notification procedure must provide for tiered reporting timeframes, with incidents of critical impact reported immediately upon discovery, incidents of high impact reported within 4 hours of discovery, and incidents of low impact reported within 5 business days of discovery.

11. Incorporating lessons learned through detection and response activities into agency incident response plans to continuously improve organizational response activities.

12. Developing agency strategic and operational information technology security plans required pursuant to this section.

13. Establishing the managerial, operational, and technical safeguards for protecting state government data and information technology resources that align with the state agency risk management strategy and that protect the confidentiality, integrity, and availability of information and data.

14. Providing all agency employees with information technology security and cybersecurity awareness education and training within 30 days after commencing employment.

(c) Assist state agencies in complying with this section.

(d) In collaboration with the Cybercrime Office of the Department of Law Enforcement, provide training that must include training on cybersecurity threats, trends, and best practices for state agency information security managers and computer security incident response team members at least annually.

(e) Annually review the strategic and operational information technology security plans of executive branch agencies.

(f) Develop and establish a cutting-edge internship or work-study program in science, technology, engineering, and mathematics (STEM), which will produce a more skilled cybersecurity workforce in the state. The program must be a
collaborative effort involving negotiations between the Agency for State Technology, relevant Agency for State Technology partners, and the Florida Center for Cybersecurity.

(4) Each state agency head shall, at a minimum:

(a) Designate an information security manager to administer the information technology security program of the state agency. This designation must be provided annually in writing to the Agency for State Technology by January 1. A state agency’s information security manager, for purposes of these information security duties, shall report directly to the agency head.

1. The information security manager shall establish a computer security incident response team to respond to a suspected computer security incident.

2. Computer security incident response team members shall convene as soon as practicable upon notice of a suspected security incident.

3. Computer security incident response team members shall determine the appropriate response for a suspected computer security incident. An appropriate response includes taking action to prevent expansion or recurrence of an incident, mitigating the effects of an incident, and eradicating an incident. Newly identified risks must be mitigated or documented as an accepted risk by computer security incident response team members.

(b) Submit to the Agency for State Technology annually by July 31, the state agency’s strategic and operational information technology security plans developed pursuant to rules and guidelines established by the Agency for State Technology.
(d) Subject to annual legislative appropriation, conduct a risk assessment that must be administered by a third party consistent with the guidelines and processes prescribed by the Agency for State Technology. An initial risk assessment must be completed by July 31, 2017. Additional risk assessments shall be completed periodically consistent with the guidelines and processes prescribed by the Agency for State Technology.

(e) Develop, and periodically update, written internal policies and procedures, which include procedures for reporting information technology security incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Agency for State Technology. Procedures for reporting information technology security incidents and breaches must include notification procedures and reporting timeframes. Such policies and procedures must be consistent with the rules, guidelines, and processes established by the Agency for State Technology to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.

(f) Implement managerial, operational, and technical safeguards established by the Agency for State Technology to address identified risks to the data, information, and information technology resources of the agency.

(g) Ensure that periodic internal audits and evaluations of the agency’s information technology security program for the data, information, and information technology resources of the agency are conducted. The results of such audits and evaluations are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.

(h) Include appropriate information technology security requirements in the written specifications for the solicitation of information technology and information technology resources and services, which are consistent with the rules and guidelines established by the Agency for State Technology in collaboration with the Department of Management Services.

(i) Provide information technology security and cybersecurity awareness training to all state agency employees in the first 30 days after commencing employment concerning information technology security risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to attain an appropriate level of cyber literacy and reduce those risks. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement. Agencies shall ensure that privileged users, third-party stakeholders, senior executives, and physical and information security personnel understand their roles and responsibilities.
Florida Senate - 2016

(j) In collaboration with the Cybercrime Office of the Department of Law Enforcement, provide training on cybersecurity threats, trends, and best practices to computer security incident response team members at least annually.

(k) Develop a process for detecting, reporting, and responding to threats, breaches, or information technology security incidents that are consistent with the security rules, guidelines, and processes established by the Agency for State Technology.

1. All information technology security incidents and breaches must be reported to the Agency for State Technology. Procedures for reporting information technology security incidents and breaches must include notification procedures.

2. For information technology security breaches, state agencies shall provide notice in accordance with s. 501.171.

(1) Improve organizational response activities by incorporating lessons learned from current and previous detection and response activities into response plans.

(5) The Agency for State Technology shall adopt rules relating to information technology security and to administer this section.

Section 3. Subsection (17) of section 1001.03, Florida Statutes, is amended to read:

1001.03 Specific powers of State Board of Education.—
(17) UNIFIED STATE PLAN FOR SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS (STEM).—The State Board of Education, in consultation with the Board of Governors, the Technology Advisory Council, and the Department of Economic Opportunity, shall adopt a unified state plan to improve K-20 STEM education and prepare students for high-skill, high-wage, and high-demand employment in STEM and STEM-related fields.

Section 4. Section 1004.444, Florida Statutes, is amended to read:

1004.444 Florida Center for Cybersecurity.—
(1) The Florida Center for Cybersecurity is established within the University of South Florida.

(2) The goals of the center are to:

(a) Position Florida as the national leader in cybersecurity and its related workforce through education, research, and community engagement. The center shall coordinate with the Technology Advisory Council in pursuit of this goal.

(b) Assist in the creation of jobs in the state’s cybersecurity industry and enhance the existing cybersecurity workforce. The center shall coordinate with the Technology Advisory Council in pursuit of this goal.

(c) Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training. The center shall coordinate with the Technology Advisory Council in pursuit of this goal.

(d) Seek out partnerships with major military installations to assist, when possible, in homeland cybersecurity defense initiatives.

(e) Attract cybersecurity companies to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.

Section 5. For the 2016-2017 fiscal year, the sums of $650,000 in nonrecurring funds and $50,000 in recurring funds are appropriated from the General Revenue Fund to the Agency for State Technology.
State Technology to conduct training exercises in coordination with the Florida National Guard.

Section 6. For the 2016-2017 fiscal year, the sum of $12 million is appropriated from the General Revenue Fund to the Agency for State Technology for the purpose of implementing this act.

Section 7. This act shall take effect July 1, 2016.
THE FLORIDA SENATE

APPEARANCE RECORD

2-11-16
Meeting Date

7050
Bill Number (if applicable)

Information TECHNOLOGY Security
Topic

JAMES TAYLOR
Name

EXECUTIVE DIRECTOR
Job Title

Address
Street
City
State
Zip

Phone 407 718-2780

Email

Speaking: [ ] For [ ] Against [ ] Information
Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing FLORIDA TECHNOLOGY COUNCIL

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

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

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

APPEARANCE RECORD

Meeting Date 2/11/15

Bill Number (if applicable) 7050

Topic Information Technology

Name Chuck Cliburn

Job Title President, New Capital IT

Address 101 N. Monroe #900

Tallahassee 32301

Phone 559-7100

Email Chuck@newcapitalllc.com

City State Zip 32301

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against

(The Chair will read this information into the record.)

Representing AIF

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 (10/14/14)
January 22, 2016

Senator Alan Hays, Chair
Committee on General Government Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays,

I am writing to respectfully request your cooperation in placing Senate Bill 7050, relating to Information Technology Security, on the Committee on General Government Appropriations agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

Jeremy Ring
Senator District 29

cc: Jamie DeLoach, Staff Director
Lisa Waddell, Committee Administrative Assistant
CourtSmart Tag Report

Room: EL 110  Case No.:  Type:  
Caption: Senate Appropriations Subcommittee on General Government  Judge:  

Started:  2/11/2016 10:07:25 AM  Length: 01:08:08
Ends:  2/11/2016 11:15:32 AM

10:07:25 AM Sen. Hays (Chair)
10:08:46 AM S 1226
10:08:54 AM Sen. Ring
10:10:10 AM S 7050
10:10:16 AM Sen. Ring
10:11:39 AM Am. 842542
10:11:46 AM Sen. Ring
10:12:09 AM S 7050 (cont.)
10:12:15 AM Chuck Cliburn, President, New Capitol IT, Associated Industries of Florida (waives in support)
10:12:19 AM James Taylor, Executive Director, Florida Technology Council (waives in support)
10:13:02 AM S 864
10:13:05 AM Sen. Smith
10:14:29 AM Roger Simmermaker, Author/Speaker/Publisher, Consumer Patriotism Corporation
10:16:21 AM James Taylor, Executive Director, Florida Technology Council (waives in support)
10:16:38 AM Gail Marie Perry, Chair, Communications Workers of America Council of Florida (waives in support)
10:16:51 AM David E. Singer, citizen/voter (waives in support)
10:17:02 AM Frank Angel, citizen (waives in support)
10:17:40 AM CS/SB 912
10:17:46 AM Sen. Flores
10:19:39 AM Sen. Dean
10:20:11 AM Sen. Flores
10:21:14 AM Sen. Dean
10:21:24 AM Sen. Flores
10:21:46 AM Sen. Flores
10:22:00 AM Antonio Davis, Veteran
10:25:17 AM Sen. Hays
10:25:28 AM Melissa Ramba, Vice President, Government Affairs, Florida Retail Federation (waives in support)
10:25:44 AM Don Heaton, Lieutenant, Volusia County Sheriff's Office/Florida Sheriff's Association (waives in support)
10:25:46 AM Jared Ross, Senior Vice President, Governmental Affairs, Florida Credit Union Association (waives in support)
10:26:02 AM Jonathan Rees, Deputy Director, Legislative Affairs, Florida Department of Agriculture and Consumer Services (waives in support)
10:26:09 AM Bernadette Howard, Government Affairs Committee, The Florida Police Chiefs Association (waives in support)
10:26:10 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
10:26:50 AM S 1428
10:27:00 AM Valerie Clark, Senator Simmon's Aide
10:27:54 AM John Kuczwaswki, State Board of Administration, State Board of Administration (waives in support)
10:28:40 AM CS/SB 1538
10:28:43 AM Sen. Evers
10:29:42 AM Jessica Krainak, Legislative Analyst, The Florida Department of Veteran's Affairs (waives in support)
10:29:56 AM A. Davis
10:33:36 AM S 1176
10:33:45 AM Representative Katie Edwards
10:35:22 AM S 966
10:35:40 AM Sen. Benacquisto
10:37:19 AM Elizabeth Boyd, Legislative Affairs Director, Chief Financial Officer Atwater
10:37:49 AM Caitlin Murray, Director of Government Affairs, Office of Insurance Regulation (waives in support)
10:38:23 AM Kyle Ulrich, Senior Vice President, Florida Association of Insurance Agents (waives in support)
10:39:14 AM S 1200
10:39:16 AM Sen. Bean
10:40:53 AM Al Lawson, Lobbyist, Educational Foundation (waives in support)
10:40:53 AM Alexandra Dominguez, Foundation for Florida's Future (waives in support)
10:40:59 AM Summer Pfeiffer, Vice President, Government Relations, Children's Home Society of Florida (waives of support)
10:41:16 AM Carol Bracy, Consultant, Nurse-Family Partnership (waives in support)
10:41:25 AM Heather Turnbull, Partner, Community Based Care of Central Florida, Inc. (waives in support)
10:42:00 AM S 1206
10:42:02 AM Sen. Abruzzo
10:43:11 AM CS/SB 326
10:43:18 AM Chris Spencer, Senator Brandes’ Assistant
10:43:45 AM Am. 625186
10:44:10 AM C. Spencer
10:44:11 AM CS/SB 326 (cont.)
10:44:19 AM Bob Nave, Vice President, Research, Florida Tax Watch
10:45:26 AM A. Davis (waives in support)
10:46:01 AM CS/SB 992
10:46:15 AM C. Spencer
10:47:31 AM Am. 939726
10:47:43 AM C. Spencer
10:48:00 AM Am. 893118
10:48:05 AM C. Spencer
10:48:43 AM Am. 246428
10:48:47 AM C. Spencer
10:48:56 AM Am. 689322
10:49:03 AM C. Spencer
10:49:37 AM CS/SB 992 (cont.)
10:50:19 AM S 1228
10:50:38 AM Charlie Anderson, Senator Detert's Assistant
10:52:06 AM S 1270
10:52:16 AM Sen. Simpson
10:52:49 AM Jim Spratt, Florida Fertilizer & Agrichemical Association (waives in support)
10:52:59 AM Butch Calhoun, Florida Fruit & Vegetable Association (waives in support)
10:53:08 AM Alex Lucas, Florida Fertilizer & Agrichemical Association (waives in support)
10:53:19 AM Lisa Henning, Consultant, Florida Pest Management Association (waives in support)
10:53:25 AM Chris Hanson, Ballard Partners, Bayer Corporation (waives in support)
10:54:05 AM CS/SB 1422
10:54:20 AM Diane Suddes, Senator Simmons’ Assistant
10:54:27 AM Am. 243832
10:54:56 AM D. Suddes
10:54:58 AM Am. 166092
10:55:08 AM D. Suddes
10:55:43 AM Caitlin Murray, Director, Government Affairs, Office of Insurance Regulation (waives in support)
10:56:22 AM S 1282
10:56:29 AM Sen. Dean
10:57:35 AM Am. 436274
10:57:52 AM Sen. Dean
10:58:05 AM Jackie Fauls, Legislative Affairs Director, Fish & Wildlife Conservation Commission (waives in support)
10:58:20 AM Am. 833622
10:58:27 AM Sen. Dean
10:58:43 AM J. Fauls (waives in support)
10:59:06 AM S 1282(cont.)
10:59:19 AM J. Fauls (waives in support)
10:59:37 AM S 1300
10:59:41 AM Sen. Dean
11:00:44 AM Stephen James, Florida Association of Counties (waives in support)
11:00:53 AM Lisa Henning, Consultant, Marine Industries Association of Florida (waives in support)
11:00:55 AM Rebecca O’Hara, Florida League of Cities (waives in support)
11:01:02 AM Diana Padgett, Consultant, Marine Industries of Palm Beach County (waives in support)
11:01:36 AM S 1604
11:01:49 AM Anne Bell, Senator Grimsley’s Assistant
11:03:10 AM Am 457132
11:03:16 AM A. Bell
11:03:17 AM Am. 356636
11:03:30 AM A. Bell
11:03:49 AM Robert Beck, Florida Pharmacy Association (waives in support)
11:04:12 AM S 1604 (cont.)
11:04:19 AM David Mica Jr., Director, Office of Legislative Affairs, Department of Business and Professional Regulation (waives in support)
11:04:57 AM S 922
11:05:21 AM Marcia Mathis, Senator Montford's Assistant
11:05:54 AM Am. 891642
11:06:02 AM M. Mathis
11:07:02 AM Am. 405980
11:07:12 AM Sen. Dean
11:07:32 AM Am. 891642 (cont.)
11:07:54 AM S 922 (cont.)
11:08:02 AM Keyna Cory, Lobbyist, National Waste & Recycling Association Florida Chapter (waives in support)
11:08:29 AM Andrew Ketchel, Director, Legislative Affairs, Department of Environmental Protection (waives in support)
11:08:30 AM A. Davis
11:09:50 AM S 1488
11:09:55 AM M. Mathis
11:10:23 AM Loren Levy, General Counsel, Property Appraisers' Association of Florida (waives in support)
11:11:03 AM CS/SB 1052
11:11:10 AM Sen. Hays
11:11:21 AM Am. 726962
11:11:27 AM Sen. Hays
11:12:51 AM Am. 900188
11:12:56 AM Sen. Hays
11:13:07 AM Sen. Altman
11:13:18 AM Diana Ferguson, Attorney, American Society of Landscape Architects Florida Chapter (waives in support)
11:13:31 AM Kurt Spitzer, Executive Director, Florida Stormwater Association (waives in support)
11:13:43 AM Am. 726962 (cont.)
11:14:03 AM CS/SB 1052 (cont.)
11:14:15 AM Jim Spratt, Florida Nursery Growers & Landscape Association (waives in support)
11:14:16 AM Lee Killinger, Director Public Relations & Government Affairs (waives in support)
11:14:17 AM K. Cory (waives in support)
11:14:57 AM Sen. Altman
11:15:05 AM Sen. Simpson
11:15:25 AM
11:15:30 AM
SENATOR GWEN MARGOLIS
35th District

February 11, 2016

Senator Alan Hays, Chairman
Senate Appropriations Subcommittee on General Government
Suite 320 Senate Office Building
Tallahassee, Florida 32399-1100

Dear Chairman Hays:

Please excuse my absence from the Appropriations Subcommittee on General Government Committee meeting being held on Thursday, February 11, 2016. I have been a little under the weather lately and was unable to attend.

Your favorable consideration of my request to be excused is very much appreciated.

Sincerely,

Gwen Margolis

State Senator Gwen Margolis
District 35

cc: Ms. Jamie DeLoach