

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 467	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Department of Agriculture and Consumer Services	117	Y's 0	N's
<b>SPONSOR(S):</b>	Commerce Committee; Agriculture & Property Rights Subcommittee; Raburn and others	<b>GOVERNOR'S ACTION:</b>		Approved
<b>COMPANION BILLS:</b>	CS/CS/CS/SB 498			

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**SUMMARY ANALYSIS**

CS/CS/HB 467 passed the House on April 5, 2017, and subsequently passed the Senate on May 3, 2017. The bill contains modifications to several agricultural, consumer service, and licensing activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (Department). Relating to agriculture and consumer services the bill:

- Allows agriculture education and promotion facility applications to be submitted electronically;
- Removes an outdated rulemaking reference adopting the federal Worker Protection Standard;
- Revises provisions related to cattle marks and brands;
- Applies marketing order certification filing requirements to the Division of Fruit and Vegetables;
- Authorizes the Department to enforce the Florida Building Code on all Florida Forest Service facilities;
- Authorizes the Department to perform food safety inspection of raw agricultural commodities;
- Clarifies that the sale of aquaculture products is allowed by aquaculture producers and dealers;
- Exempts dealers in agricultural products who pay by credit card from certain regulations;
- Removes the five-year expiration period for the Do Not Call list;
- Exempts certain office gyms from state regulation;
- Excludes taximeters and transportation measurement systems from permitting requirements;
- Strengthens household moving insurance requirements; and
- Authorizes the carryover of continuing education requirements related to surveyors and mappers.

Relating to licensing the bill:

- Allows a manager of a private investigative agency to manage up to three locations;
- Exempts certain partners and corporate officers from fingerprint retention requirements;
- Revises certification document requirements for Class "K" licenses;
- Authorizes Department access to Department of Law Enforcement mental competency data;
- Requires a licensee to notify their employer if arrested, and provides grounds for disciplinary action;
- Allows the temporary suspension of certain licensees arrested or formally charged with certain crimes;
- Revises private investigator and security officer training requirements; and
- Aligns mental health restoration requirements, and reduces concealed weapon license fees.

The bill is expected to have a negative fiscal impact on the Department, and provide a reduction in Department expenditures. See Fiscal Analysis & Economic Impact Statement section for discussion.

The bill was approved by the Governor on June 9, 2017, ch. 2017-85, L.O.F., and will become effective on July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0467z1.APR

DATE: June 12, 2017

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

The mission of the Department of Agriculture and Consumer Services (Department) is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.

The Division of Consumer Services, within the Department, is the state's clearinghouse for consumer complaints, information and protection, including operating Florida's Do Not Call List. Various businesses, such as Pawnbrokers, Health Studios, Sellers of Travel, Professional Surveyors and Mappers, and Telemarketing, are regulated by the Division of Consumer Services. Additionally, the Division of Consumer Services regulates standards for gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides, household moving services, and weighing and measuring devices.<sup>1</sup>

The Division of Licensing, within the Department, issues professional licenses to persons providing private security, private investigative, and recovery services to the public pursuant to ch. 493, F.S. In 2017, the Division of Licensing regulated a total of approximately 1.6 million private security, private investigative, and recovery services licenses in the state of Florida.<sup>2</sup>

The bill includes modifications to several agricultural, consumer services, and licensing activities under the Department's jurisdiction. Each portion of this analysis is divided by subject and followed by a listing of the applicable sections of the bill.

### **PRIVATE INVESTIGATIVE, PRIVATE SECURITY, AND REPOSSESSION SERVICES (Sections 10-24)**

#### ***Manager of Private Investigative Agency (Section 10)***

Current law defines a "manager" as any licensee who directs the activities of licensees at any private investigative agency or branch office.<sup>3</sup> The law requires the manager to be assigned to, and primarily operate from, the agency or branch office location for which he or she has been designated as manager.<sup>4</sup>

#### **Effect of Proposed Changes**

The bill authorizes a licensed manager of a private investigative agency ("Class 'M'" licensee) to manage up to three offices within a 150-mile radius of the location listed on the agency's Class "A" (main office) license. However, these offices must consist of the location listed on the agency's Class "A" license and up to two branch offices, or no more than three branch offices.

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<sup>1</sup> The Department of Agriculture and Consumer Services, Division of Consumer Services website available here: <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services> (last viewed February 7, 2017).

<sup>2</sup> The Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type As of January 31, 2017*, available at: [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf), (last visited February 14, 2017).

<sup>3</sup> s. 493.6101(13), F.S.

<sup>4</sup> *Id.*

According to the Department, this change considers advancements in technology that allow an individual to manage multiple locations, and will eliminate multiple licenses and fees without harm to the public.<sup>5</sup>

### ***Fingerprint Retention Exemption (Section 11)***

Current law requires each individual, partner, or principal officer in a corporation seeking licensure under ch. 493, F.S., to file with the Department a complete initial application and submit, among other things, a full set of fingerprints, a fingerprint processing fee, and a fingerprint retention fee.<sup>6</sup> The fees include the cost of retaining the fingerprints in the statewide automated biometric identification system established in s. 943.05(2)(b), F.S., and the cost of enrolling the fingerprints in the national retained print arrest notification program as required under s. 493.6108, F.S.<sup>7</sup>

While many agency partners and corporate officers carry individual ch. 493, F.S., licenses and, therefore, are already required to submit their fingerprints, participate, and pay the ongoing cost associated with enrollment in fingerprint retention, some partners and corporate officers do not hold licensure by the Department.

#### **Effect of Proposed Changes**

The bill provides that partners and corporate officers who do not possess licenses subject to renewal are exempt from the fingerprint retention requirements of the statewide automated biometric identification system and the ongoing costs associated with enrolling and retaining their fingerprints in the national retained print arrest notification program.

### ***Firearms Instructor Documentation (Section 11 continued)***

Current law requires that in addition to the application, photograph, requisite fees and a full set of fingerprints, an applicant for a Class “K” license (firearms instructor license)<sup>8</sup> must provide proof of firearm training. Specifically, the law requires firearms instructors to submit one of the following:

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate<sup>9</sup> and written confirmation by the commission that the applicant possesses an active firearms certification.
- The National Rifle Association Private Security Firearm (NRA) Instructor Certificate.<sup>10</sup>
- A firearms instructor certificate issued by a federal law enforcement agency.<sup>11</sup>

This existing language does not set forth time parameters for these certifications, which allows potential for an applicant to submit certification documents that are less than recent.

#### **Effect of Proposed Changes**

The bill provides that both the NRA and federal firearm training certificates must be valid and issued not more than three years before the submission of the applicant’s firearms instructor application.

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<sup>5</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 3 (Feb. 8, 2017).

<sup>6</sup> s. 493.6105(3)(j), F.S.

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

<sup>8</sup> s. 493.6101(14), F.S., defines “firearm instructor” as any Class “K” licensee who provides classroom or range instruction to applicants for a Class “G” statewide firearm license.

<sup>9</sup> Information regarding the Criminal Justice Standards & Training Commission Certificate can be found on the Florida Department of Law Enforcement Criminal Justice Standards & Training Commission (CJSTC) webpage, available here: <http://www.fdle.state.fl.us/cms/CJSTC/Commission/CJSTC-Home.aspx> (last viewed February 8, 2017).

<sup>10</sup> Information regarding the National Rifle Association Instructor Development Schools can be found on the NRA Instructor Development Schools webpage, available here: <http://le.nra.org/training/instructor-development-schools.aspx#schedule> (last viewed February 8, 2017).

<sup>11</sup> s. 493.6105(6), F.S.

### ***Investigation of Applicants - Mental Competency Data Access (Section 13)***

Current law requires the Department to investigate an applicant for a ch. 493, F.S., private investigative, private security, and repossession service license before it may issue the license.<sup>12</sup> A component of the investigation requires a mental health inquiry to determine whether the applicant has been adjudicated incompetent under ch. 744, F.S., the Florida Guardianship Law, or has been committed to a mental institution under ch. 394, F.S., the Florida mental health law.<sup>13</sup>

The Department of Law Enforcement maintains the Mental Competency (MECOM) database for the purpose of listing persons who are prohibited from purchasing a firearm.<sup>14</sup> MECOM contains information submitted by county clerks of court, including court records of adjudications of mental defectiveness or commitments to mental institutions.<sup>15</sup>

Currently, the Department is able to access this information for the purpose of issuing or retaining a concealed weapon license under ch. 790, F.S.<sup>16</sup> However, the Department does not have the authority to access the MECOM database to review the mental health or substance abuse records of ch. 493, F.S., private investigative, private security, and repossession service applicants. Consequently, the only method available to confirm the existence of an adjudication of incapacity or a commitment of such applicants is through the applicant's certification in their license application.<sup>17</sup>

#### **Effect of Proposed Changes**

The bill allows the Department, notwithstanding s. 790.065(2)(a)4.f., F.S.,<sup>18</sup> to receive MECOM data of individuals who are prohibited from purchasing a firearm, for the purposes of determining eligibility of Class "G" or Class "K" applicants and licensees under ch. 493, F.S. This would help prevent the licensure of individuals who have been adjudicated incompetent under ch. 744, F.S., or committed to a mental institution under ch. 394, F.S., unless competency has been judicially restored.

#### ***Arrest Notification (Parts of Sections 13 and 17)***

Current law does not require ch. 493, F.S., private investigative, private security, and repossession services licensees to notify their employer if they have been arrested. Conversely, the law requires the Department to provide this information to the employer.<sup>19</sup> Specifically, the law provides that when the Department receives information about an arrest within the state of a person who holds a valid license issued under ch. 493, F.S., for a crime that could potentially disqualify the person from holding such license, the Department must provide the arrest information to the agency that employs the licensee.<sup>20</sup>

#### **Effect of Proposed Changes**

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<sup>12</sup> s. 493.6108, F.S.

<sup>13</sup> s. 493.6108(1)(b), F.S.

<sup>14</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 4 (Feb. 8, 2017).

<sup>15</sup> s. 790.065(2)(a)4.c.(I), F.S., requires clerks of court to provide FDLE with names and identifying information of individuals committed under chapters 394, 397, or 744, F.S.

<sup>16</sup> s. 790.065 (2)(a)4.f., F.S., authorizes FDLE to provide the Department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm for the purposes of determining eligibility of applicants and licensees under ch. 790, F.S.

<sup>17</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 4 (Feb. 8, 2017).

<sup>18</sup> s. 790.065 (2)(a)4.f., F.S., authorizes FDLE to provide the Department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm for the purposes of determining eligibility of applicants and licensees under ch. 790, F.S.

<sup>19</sup> s. 493.6108(5), F.S.

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

The bill requires a person licensed under ch. 493, F.S., to notify his or her employer within three calendar days if he or she is arrested for any offense. The bill also includes failure of any licensee to notify his or her employer within three calendar days if arrested for any offense as grounds for disciplinary action.<sup>21</sup>

### ***Agency Notification Requirements (Section 14)***

Current law provides requirements for private security, investigative, and recovery agencies, or security officer training schools to follow when notifying the Department of changes of partners, officers, or employees.<sup>22</sup>

Specifically, the law requires the agencies or schools to do the following:

- After filing the application, unless the Department declines to issue the license or revokes it after issuance, an agency or school must, within five working days of the withdrawal, removal, replacement, or addition of any or all partners or officers, notify and file with the Department complete applications for such individuals (the agency's or school's good standing under this chapter are contingent upon the Department's approval of any new partner or officer),<sup>23</sup> and
- Each agency or school must, upon the employment or termination of employment of a licensee, report such employment or termination immediately to the Department and, in the case of a termination, report the reason or reasons (the report must be on a form prescribed by the Department).<sup>24</sup>

### **Effect of Proposed Changes**

The bill eliminates the requirement that schools notify the Department of changes of partners, officers, or employees. Instead of requiring that an agency report the employment or termination of employment of a licensee *immediately*, the bill requires notification to occur *within 15 calendar days*.

According to the Department, the current law seemingly requires security officer training schools to submit applications for corporate officers. However, the schools do not currently submit applications for officers or add/remove officers. Security officer training school requirements are outlined in s. 493.6304, F.S., separate and apart from agency filing requirements. This change corrects potentially conflicting statutory requirements.<sup>25</sup>

In addition, the bill revises the requirement that the agency report the employment or termination of employment of a licensee in a form prescribed by the Department, to instead be submitted electronically in a manner prescribed by the Department.

### ***Renewal Applications (Section 15)***

Current law requires that an applicant for renewal of a Class "G", statewide firearm license, submit proof that he or she has received, during each year of the license period, a minimum of four hours of firearms recertification training taught by a firearms instructor licensee and has complied with such other health and training requirements that the Department must adopt by rule.<sup>26</sup> Proof of completion of firearms recertification training must be submitted to the Department upon completion of the training.<sup>27</sup>

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<sup>21</sup> Per s. 493.6118(2), F.S., disciplinary action taken by the Department may include(s): denying an application for the issuance or renewal of a license; issue a reprimand; impose an administrative fine in the Class I category pursuant to s. 570.971, F.S., for every county or separate offense, or place the licensee on probation for a period of time and subject to such conditions as the Department may specify.

<sup>22</sup> s. 493.6112, F.S.

<sup>23</sup> s. 493.6112(1), F.S.

<sup>24</sup> s. 493.6112(2), F.S.

<sup>25</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 5 (Feb. 8, 2017).

<sup>26</sup> s. 493.6113(3)(b), F.S.

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

Presently, the training requirement does not specify a type and caliber of firearm.

### Effect of Proposed Changes

The bill requires a Class “G” licensee to successfully complete requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties.

The bill also replaces the term “recertification” with “requalification.” According to the Department, this nomenclature is used by the industry and is reflected in Department rulemaking.<sup>28</sup>

### ***Temporary Class “G” Licensure (Section 16)***

Current law authorizes the Department to issue a Class “G” temporary firearm license, on a case-by-case basis, if the agency or employer of the applicant has certified that the applicant has been determined to be mentally and emotionally stable. Determinations are made by one of the following methods:

- A validated written psychological test taken within the previous 12-month period;
- An evaluation by a psychiatrist or psychologist licensed in this state or by the Federal Government made within the previous 12-month period; or
- The presentation of a DD form 214, issued within the previous 12-month period, which establishes the absence of emotional or mental instability at the time of discharge from military service.<sup>29</sup>

The Department of Law Enforcement maintains the MECOM database for the purposes of listing persons who are prohibited from purchasing a firearm.<sup>30</sup> The MECOM database contains information submitted by county clerks of court, including court records of adjudications of mental defectiveness or commitments to mental institutions.<sup>31</sup>

Currently, the Department is able to access this information for the purpose of issuing or retaining a concealed weapon license under ch. 790, F.S.<sup>32</sup> However, the Department does not have authority to access the MECOM database to review the mental health or substance abuse records of ch. 493, F.S., private investigative, private security, and repossession service applicants.

### Effect of Proposed Changes

The bill allows the Department to review MECOM data of individuals applying for a temporary Class “G” license to determine that the applicant is not prohibited from licensure based upon the data.

This section also corrects a cross-reference in s. 493.6115(4), F.S., regarding the conditions under which a Class “G” licensee may carry a concealed weapon.

### ***Grounds for Disciplinary Action - Temporary License Suspension (Part of Section 17)***

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<sup>28</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 5 (Feb. 8, 2017).

<sup>29</sup> s. 493.6115(12), F.S.

<sup>30</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 4 (Feb. 8, 2017).

<sup>31</sup> s. 790.065(2)(a)4.c.(I), F.S., requires clerks of court to provide FDLE with names and identifying information of individuals committed under chapters 394, 397, or 744, F.S.

<sup>32</sup> s. 790.065 (2)(a)4.f., F.S., authorizes FDLE to provide the Department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm for the purposes of determining eligibility of applicants and licensees under ch. 790, F.S.

Current law enumerates the grounds under which a licensee under ch. 493, F.S., may be subject to disciplinary action by the Department.<sup>33</sup> The Administrative Procedure Act (APA) specifies the procedures for such agency actions,<sup>34</sup> including requirements for when an agency deems its actions necessary to protect the public, but not of an imminent emergency nature.<sup>35</sup> In addition, the APA specifies the procedures to follow if an agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license.<sup>36</sup>

Thus, if the Department determines that the arrest of a ch. 493, F.S., licensee constitutes an immediate danger to the public health, safety, or welfare, the Department follows the emergency suspension procedures established in the APA.<sup>37</sup> This requires an agency to proceed to a suspension or revocation hearing pursuant to ss. 120.569 and 120.57, F.S., after the issuance of the emergency suspension order. However, according to the Department, this particular requirement is problematic because to proceed with administrative action based on a licensee's arrest during the pendency of criminal proceedings can result in an administrative hearing being held before or during a criminal trial.<sup>38</sup> The Department indicates that both prosecutors and defense attorneys are extremely reluctant to allow witnesses to be deposed and testify at an administrative hearing before a criminal trial takes place as the same facts will be used to prove both cases.<sup>39</sup>

Currently, the Department of Financial Services is mandated, upon receipt of information or an indictment, to immediately temporarily suspend the licenses of bail bond agents and insurance agents when the licensees have been charged with certain crimes.<sup>40</sup> Along with these temporary suspension orders, the licensees are notified of their right to challenge the action by requesting a hearing pursuant to ss. 120.569 and 120.57, F.S.

#### Effect of Proposed Changes

Similar to the authority provided to the Department of Financial Services, the bill allows the Department to temporarily suspend a Class "G" or "K" license until resolution of the criminal proceeding if the licensee was arrested or charged with a firearms related crime. The bill also allows the Department to temporarily suspend any ch. 493, F.S., license until resolution of the criminal proceeding, if the licensee was arrested for a forcible felony.<sup>41</sup> In each instance, the suspended licensee must be provided with notice of his or her ch. 120, F.S., administrative hearing rights.

Specifically, the bill requires the Department to provide a licensee who is suspended under this section with a notice of hearing rights pursuant to chapter 120, F.S., for the limited purpose of determining whether the licensee has been arrested or charged with a disqualifying firearms related crime or forcible felony.

In circumstances where the criminal case results in a non-disqualifying disposition, the bill requires the Department to issue an order lifting the suspension, upon the licensee's submission to the Department of a certified copy of the final resolution. If the criminal case results in a disqualifying disposition, the suspension must remain in effect and the Department must proceed with revocation proceedings pursuant to chapter 120, F.S.

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<sup>33</sup> s. 493.6118, F.S.

<sup>34</sup> s. 120.60(5) and (6), F.S.

<sup>35</sup> s. 120.60(5), F.S.

<sup>36</sup> s. 120.60(6), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 6 (Feb. 8, 2017).

<sup>39</sup> *Id.*

<sup>40</sup> ss. 648.45(1) and 626.611(2), F.S.

<sup>41</sup> s. 776.08, F.S., defines "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

### ***License Fees (Sections 12, 18, 23 and 30)***

General licensing requirements in statute provide that Class “A,” Class “B,” Class “AB,” Class “K,” Class “R,” and branch agency licenses are valid<sup>42</sup> and renewable<sup>43</sup> for a period of three years. However, the fees for these licenses are currently listed under statutes that contain the term “biennial” in the section heading. This inconsistency was recently pointed out to the Department by the Joint Administrative Procedures Committee (JAPC).<sup>44</sup>

#### **Effect of Proposed Changes**

The bill corrects inconsistencies of triennial licenses being listed under a heading of biennial by removing the term *biennial* from the licensing fee statute headings of ss. 493.6107, 493.6202, 493.6302, and 493.6402, F.S.

### ***License/Training Requirements (Sections 19, 21, 22 and 24)***

The following sections of statute contain obsolete effective dates and/or provisions requiring training to be provided in two parts: sections 493.6203(5), 493.6203(6)(b), 493.6203(6)(c), 493.6303(4)(a), 493.6303(4)(b), and 493.6403(2), F.S.

#### **Effect of Proposed Changes**

The bill removes requirements that training be provided in two parts for Class “C” (Private Investigative Intern) and Class “D” (Security Officer) licenses. According to the Department, whether the courses are taught in two parts or one does not affect the training received by an applicant.<sup>45</sup>

The bill also removes obsolete effective dates for specific training.

### **BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS (Sections 2 – 8)**

The practice of surveying and mapping is governed by ch. 472, F.S. According to the Department, licensed surveyors and mappers make exact measurements and determine property boundaries.<sup>46</sup> They provide data relevant to the shape, contour, gravitation, location, elevation, or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction, and other purposes.<sup>47</sup>

The Board of Professional Surveyors and Mappers (Board) has authority to adopt rules to implement ch. 472, F.S., subject to approval by the Department.<sup>48</sup> The Board regulates professional surveyors and mappers and businesses that offer surveying and mapping services. The Board also approves continuing education providers and the continuing education courses that are offered to licensees.<sup>49</sup>

### ***Exempted Persons (Section 2)***

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<sup>42</sup> s. 493.6111(2), F.S.

<sup>43</sup> s. 493.6113(1), F.S.

<sup>44</sup> Joint Administrative Procedures Committee letter to the Department of Agriculture and Consumer Services Division of Licensing, December 20, 2016.

<sup>45</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 7 (Feb. 8, 2017).

<sup>46</sup> Florida Department of Agriculture and Consumer Services, Consumer Services A to Z Resource Guide: *Surveyors and Mappers*, <https://csapp.800helpfla.com/CSPublicApp/AZGuide/AZSearchResult.aspx#610731692> (last visited Mar. 8, 2017).

<sup>47</sup> *Id.*

<sup>48</sup> s. 472.008, F.S.

<sup>49</sup> s. 472.018, F.S.



Current law provides several exemptions from the surveying and mapping regulations of ch. 472, F.S. The exemptions apply to surveyors and mappers when working solely for the federal government, registered professional engineers who contract for services performed by registered surveyors and mappers, contractors and their subordinates when working from controls established by a registered professional surveyor and mapper, persons employed by county property appraisers and persons employed by the Department of Revenue when performing limited mapping services, and employees of any state, county, municipal, or other governmental unit of this state when subordinate to, and supervised by, a registered surveyor and mapper.<sup>50</sup>

### Effect of Proposed Changes

The bill provides an exemption from surveying and mapping regulations for persons who are under contract with an individual registered or legal entity certified under ch. 472, F.S., and who are under the supervision of and subordinate to a person in responsible charge registered under this chapter, to the extent that the supervision meets standards adopted by rule of the Board.

### ***Orientation of Real Property (Section 3)***

Current law defines the “practice of surveying and mapping” to mean, among other things, any professional service or work, the adequate performance of which involves:

- The application of special knowledge of the principles of mathematics;
- The related physical and applied sciences, and
- The relevant requirements of law for adequate evidence of the act of measuring, locating, establishing, or reestablishing lines, angles, elevations, natural and manmade features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surface of bodies of water.<sup>51</sup>

The law provides that the purpose of these practices is to determine, establish, describe, display, or interpret the facts of size, shape, topography, tidal datum planes, legal or geodetic location or relocation, and orientation of improved or unimproved real property and appurtenances thereto, including acreage and condominiums.

### Effect of Proposed Changes

The bill clarifies that the practice of surveying and mapping includes, but is not limited to, orientation of real property and attached personal property. In addition, the amendment adds volume to the list of measurable facts that are used by surveyors and mappers.

### ***Examination Prerequisites (Section 4)***

Current law provides prerequisites that must be met by an applicant in order to be eligible to take the licensure examination to practice as a surveyor and mapper. The applicant must be of good moral character and have satisfied one of the following two education requirements:

1. Received a degree in surveying and mapping of 4 years or more in a surveying and mapping degree program from a college or university recognized by the Board, and has a specific experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the

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<sup>50</sup> s. 472.003, F.S.

<sup>51</sup> s. 472.005(4)(a), F.S.

applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

- The completed surveying and mapping degree of 4 years or more in a surveying and mapping degree program must have included not fewer than 32 semester hours of study, or its academic equivalent, in the science of surveying and mapping or in Board-approved surveying-and-mapping-related courses.
  - Work experience acquired as a part of the education requirement must not be construed as experience in responsible charge.
2. Graduated from a 4-year course of study, other than in surveying and mapping, at an accredited college or university and has a specific experience record of 6 or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, 5 years of which must be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.
- The course of study in disciplines other than surveying and mapping must have included not fewer than 32 semester hours of study or its academic equivalent. The applicant must have completed a minimum of 25 semester hours from a college or university approved by the Board in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences.
  - Any of the required 25 semester hours of study completed not as a part of the 4-year course of study must be approved at the discretion of the Board .
  - Work experience acquired as a part of the education requirement must not be construed as experience in responsible charge.<sup>52</sup>

In addition, a person is entitled to take an examination for the purpose of determining whether he or she is qualified to practice in this state as a surveyor and mapper intern if the person is in the final year, or is a graduate, of an approved surveying and mapping curriculum in a school that has been approved by the Board .<sup>53</sup>

### Effect of Proposed Changes

The bill clarifies the examination prerequisites for surveying and mapping license applicants as follows:

- Requires the applicant to have received a bachelor's degree, its equivalent, or higher in surveying and mapping or a similarly titled program, including, but not limited to, geomatics, geomatics engineering, and land surveying from a college or university recognized by the Board; and removes the requirement that the completed surveying and mapping degree of 4 years or more include not fewer than 32 semester hours of study, or its academic equivalent, in the science of surveying and mapping or in Board-approved surveying-and-mapping-related courses.
- Requires the applicant to have received a bachelor's degree, its equivalent, or higher in a course of study other than surveying and mapping; and removes the requirement that the course of study in disciplines other than surveying and mapping include not fewer than 32 semester hours of study or its academic equivalent.

The bill specifies the examination prerequisites for the surveying and mapping intern examination as follows:

- The person is required to be in good standing in, or a graduate of, a bachelor degree program, its equivalent or higher, at an accredited college or university and have obtained a minimum of 25 semester hours in surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the physical sciences, or any combination thereof; or
- The person is required to have obtained, from an accredited college or university, a minimum of 15 semester hours in surveying, mapping, mathematics, photogrammetry, forestry, civil

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<sup>52</sup> s. 472.013(2), F.S.

<sup>53</sup> s. 472.013(3), F.S.

engineering, or land law and the physical sciences, or any combination thereof, and have a specific surveying and mapping experience record of 2 or more years as a subordinate to a registered surveyor and mapper.

The bill prohibits the intern examination prerequisites from being construed as a substitute for the degree requirement to take the exams for licensure as outlined in the surveying and mapping licensee prerequisites.

### ***Photogrammetrists (Section 5)***

A “photogrammetrist” is defined as any person who engages in the practice of surveying and mapping using aerial or terrestrial photography or other sources of images.<sup>54</sup> The practice of surveying and mapping also includes, but is not limited to, photogrammetric control.<sup>55</sup> The specialization of photogrammetry focuses on measuring a subject using high-quality images.<sup>56</sup> Recent technological advances in digital cameras, computer processors, and computational techniques have increased access to accurate photogrammetry measurements.<sup>57</sup> In 2016, the Department reported that due to the changing shape of the profession, the subprofession of photogrammetry has greatly dwindled, and individuals are no longer taking the photogrammetrist exam.<sup>58</sup>

#### Effect of Proposed Changes

The bill removes photogrammetrists from the list of applicants whom the Board is required to certify as qualified for a license by endorsement.

### ***Continuing Education (Section 6)***

To maintain an active license, surveying and mapping licensees are required to complete continuing education requirements as approved by the Board, and pay applicable fees.<sup>59</sup> Current law prohibits the Department from renewing a surveying and mapping license until the licensee submits proof satisfactory to the Board that during the 2 years before her or his application for renewal the licensee has completed at least 24 hours of continuing education.<sup>60</sup> The Board is required to adopt rules to establish the criteria and course content for the continuing education courses,<sup>61</sup> is authorized to provide by rule that distance learning may be used to satisfy continuing education requirements.<sup>62</sup>

The Board is also required to issue an order requiring a person or entity to cease and desist from offering any continuing education programs for licensees, and fining, suspending, or revoking any approval of the provider previously granted by the Board if the Board determines that the person or entity failed to provide appropriate continuing education services that conform to approved course material.<sup>63</sup>

#### Effect of Proposed Changes

The bill authorizes the Board to provide by rule the carryover of not more than 12 hours of continuing education hours for each renewal cycle.

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<sup>54</sup> s. 472.005, F.S.

<sup>55</sup> s. 472.005(4)(b), F.S.

<sup>56</sup> See generally, Cultural Heritage Imaging, *Photogrammetry: What is it?*, <http://culturalheritageimaging.org/Technologies/Photogrammetry/> (last visited Mar. 8, 2017).

<sup>57</sup> *Id.*

<sup>58</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 3-4 (Nov. 17, 2015).

<sup>59</sup> s. 472.018, F.S.

<sup>60</sup> s. 472.018, F.S.

<sup>61</sup> s. 472.018(1), F.S.

<sup>62</sup> s. 472.018(2), F.S.

<sup>63</sup> s. 472.018(10), F.S.

The bill removes the requirement that the Board adopt rules to establish course content, and requires the rules to apply to continuing education providers, instead of continuing education courses.

The bill revises the authority of the Board to provide by rule distance learning in order to satisfy continuing education requirements, to instead provide by rule the method of delivery and criteria that may be used to satisfy the requirements.

The bill removes the requirement that continuing education services conform to approved course material as it relates to the Board issuing cease and desist orders for failure to provide appropriate continuing education services.

### ***Metal Seals (Section 7)***

Current law requires the Board to adopt, by rule, a form of seal to be used by all registrants holding valid certificates of registration.<sup>64</sup> Each registrant must obtain an impression-type metal seal in that form; and all final drawings, plans, specifications, plats, or reports prepared or issued by the registrant in accordance with the standards of practice established by the Board must be signed by the registrant, dated, and stamped with the seal.<sup>65</sup>

#### Effect of Proposed Changes

The bill removes impression type metal seals as the exclusive seal that registered surveyors or mappers must stamp documents with, and instead simply requires “a seal.” This would allow the Board to adopt, by rule, a form of seal other than metal to be used.

### ***Elevation Certificates (Section 8)***

Current law defines an “elevation certificate” as the certificate “used to demonstrate the elevation of property which has been developed by the Federal Emergency Management Agency pursuant to federal floodplain management regulation and which is completed by a surveyor and mapper.”<sup>66</sup> Beginning January 1, 2017, a surveyor and mapper is required to, within 30 days after completion, submit to the Division of Emergency Management within the Executive Office of the Governor a copy of each elevation certificate that he or she completes.<sup>67</sup> The copy must be unaltered, except that the surveyor and mapper may redact the name of the property owner.<sup>68</sup>

#### Effect of Proposed Changes

The bill revises the requirements of surveyors and mappers when submitting elevation certificates to the Division of Emergency Management to clarify that the copy submitted to the Division need not be signed and sealed. In addition, the bill requires surveyors and mappers to retain a signed and sealed copy in their records as prescribed by the Board of Professional Surveyors and Mappers.

## **CONSUMER SERVICES (Sections 25 - 30)**

### ***Health Studios (Section 25)***

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<sup>64</sup> s. 472.025(1), F.S.

<sup>65</sup> *Id.*

<sup>66</sup> s. 472.0366(1)(a), F.S.

<sup>67</sup> s. 472.0366(2), F.S.

<sup>68</sup> *Id.*

Currently, the Division of Consumer Services within the Department regulates Health Studios.<sup>69</sup> Requirements under the law include, but are not limited to:

- Registration with the Department;<sup>70</sup>
- An annual registration fee of \$300 for each health studio location;<sup>71</sup>
- Contract requirements such as consumer total payment obligations, and cancellation provisions;<sup>72</sup>
- Provision of a security bond, generally ranging from \$10,000 to \$25,000;<sup>73</sup> and
- Prohibited practices, such as committing an intentional fraud.<sup>74</sup>

Certain businesses are exempt from all of the provisions of the health studio registration law.<sup>75</sup> The following businesses or activities may be declared exempt upon filing an affidavit with the Department establishing that the business meets one of the following exemption qualifications:

- A bona fide non-profit organization which has been granted tax-exempt status by the United States Internal Revenue Service (IRS);
- A gymnastics school engaged only in instruction and training and in which exercise is only incidental to such instruction and training;
- A golf, tennis or racquetball club in which sports play is the only activity offered by the club. This exemption does not apply if the facility offers the use of physical exercise equipment;
- A program or facility offered and used only for the purpose of dance, aerobic exercise, or martial arts, and which utilizes no physical exercise equipment; and
- A country club that has as its primary function the provision of a social life and recreational amenities to its members, and for which a program of physical exercise is merely incidental to membership.

### Effect of Proposed Changes

The bill exempts a program or facility that is offered by an organization for the exclusive use of its employees and their family members from the health studio regulations. This effectively exempts office gyms that are operated by a business for its employees.

### **Telephone Solicitation (Section 26)**

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone.<sup>76</sup> The state mirrors this provision statutorily<sup>77</sup> and requires the Department to maintain the state's Do Not Call list,<sup>78</sup> also known as the “no sales solicitation calls” list.<sup>79</sup> A “telephonic sales call” is defined as a telephone call or text message to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.<sup>80</sup>

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<sup>69</sup> ss. 501.012 – 501.019, F.S.; s. 501.0125(1), defines “health studio” as any person who is engaged in the sale of services for instruction, training, or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise. The term does not include an individual acting as a personal trainer.

<sup>70</sup> s. 501.015, F.S.

<sup>71</sup> *Id.*

<sup>72</sup> s. 501.017, F.S.

<sup>73</sup> s. 501.016, F.S.

<sup>74</sup> s. 501.019, F.S.

<sup>75</sup> s. 501.013, F.S.

<sup>76</sup> 47 U.S.C. s. 227.

<sup>77</sup> s. 501.059, F.S.

<sup>78</sup> Information regarding the Do Not Call list can be found at the Florida Department of Agriculture and Consumer Services, *Florida DO NOT CALL Program* webpage, available at: <https://www.fldnc.com/About.aspx> (last viewed February 9, 2017).

<sup>79</sup> s. 501.059(3), F.S.

<sup>80</sup> s. 501.059(1)(g), F.S.

Residents who do not wish to receive sales calls may have their residential, mobile, or telephonic paging device telephone number included on this list by the Department for a period of five years.<sup>81</sup> After the five years has expired, the person's subscription expires.

### Effect of Proposed Changes

The bill removes the five year subscription expiration period, allowing subscribers to remain on the list until they choose otherwise. This change will mirror the federal Telephone Consumer Protection Act which currently has no expiration.

### ***Household Moving Services (Section 27)***

Current law requires any person engaged in intrastate household moving services to register with the Department.<sup>82</sup> The law governs the loading, unloading, transportation or shipment, and affiliated storage of household goods by movers and applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods. The law is intended to secure the satisfaction and confidence of shippers and members of the public when using a mover.<sup>83</sup>

A certificate of liability insurance coverage must be provided by the mover showing proof of proper coverage, issued by a company authorized to transact business in this state. The Department shall be named as a certificate holder and must be notified at least 10 days before cancellation of insurance coverage.<sup>84</sup> The insurance coverage must at a minimum include:

- Liability insurance coverage for the loss or damage of household goods as a result of the negligence of the mover in an amount of not less than \$10,000 per shipment.
  - In lieu of the required liability insurance coverage, a mover operating two or fewer trucks is authorized, and a moving broker is required, to file a performance bond or certificate of deposit in the amount of \$25,000 with the Department designating the Department as the sole beneficiary.<sup>85</sup>
- Motor vehicle coverage, including bodily injury and property damage liability coverage in the following minimum amounts:
  - \$50,000 per occurrence for a commercial motor vehicle with a gross weight of less than 35,000 pounds;
  - \$100,000 per occurrence for a commercial motor vehicle with a gross weight of more than 35,000 pounds, but less than 44,000 pounds; and
  - \$300,000 per occurrence for a commercial motor vehicle with a gross weight of 44,000 pounds or more.<sup>86</sup>

A mover's failure to maintain liability insurance coverage constitutes an immediate threat to the public health, safety, and welfare.<sup>87</sup> If a mover fails to maintain insurance coverage, the Department is authorized to impose the following penalties:

- Immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state,<sup>88</sup> and
- Notwithstanding the availability of any administrative relief pursuant to ch. 120, F.S., seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies, a civil penalty not to exceed \$5,000, and court costs.<sup>89</sup>

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<sup>81</sup> s. 501.059(3), F.S.

<sup>82</sup> ch. 507, F.S.

<sup>83</sup> s. 507.02, F.S.

<sup>84</sup> s. 507.04, F.S.

<sup>85</sup> s. 507.04(1), F.S.

<sup>86</sup> s. 507.04(2), F.S.

<sup>87</sup> s. 507.04(1)(a)2., F.S.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

This provision only applies to liability insurance coverage requirements. As a result, the Department does not appear to have the authority to impose these penalties if a mover fails to maintain motor vehicle coverage.

### Effect of Proposed Changes

The bill authorizes the Department to impose the penalties that are currently authorized for failure to maintain liability insurance, on household movers who fail to maintain the required motor vehicle insurance.

### ***Weights and Measures (Sections 28, 29 and 30)***

Currently, the Bureau of Standards within the Department is responsible for the inspection of weights and measures devices or instruments in Florida.<sup>90</sup> The law defines “weights and measures” as all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices, excluding those weights and measures used for the purpose of inspecting the accuracy of devices used in conjunction with aviation fuel.<sup>91</sup>

The following commercial weights or measures instruments or devices are exempt from the requirements governing weights and measures if the device is:

- A taximeter that is licensed, permitted, or registered by a municipality, county, or other local government and is tested for accuracy and compliance with state standards by the local government in cooperation with the state as authorized in s. 531.421, F.S.
- Used exclusively for weighing railroad cars and is tested for accuracy and compliance with state standards by a private testing agency.
- Used exclusively for measuring aviation fuel or petroleum products inspected under chapter 525, F.S.<sup>92</sup>

### Effect of Proposed Changes

The bill excludes taximeters and transportation measurement systems from the definition of “weights and measures.” In addition, the bill removes taximeters from the exemptions from weights and measures permit requirement, and from the list of maximum use permit fees established for weights or measures instruments or devices.

### **AGRICULTURE (Sections 1, 9, 31, 32, 33, 34, 35, 36, 37, and 38)**

#### ***Agriculture Education and Promotion Facilities (Section 1)***

The Department is required to serve as the state agency for screening and certifying applicants as a qualified agriculture education and promotion facility.<sup>93</sup> An “agriculture education and promotion facility” is defined as an exhibition hall, arena, civic center, exposition center, or other capital project or facility which can be used for exhibitions, demonstrations, trade shows, classrooms, civic events, and other purposes that promote agriculture, horticulture, livestock, equestrian, and other resources of the state and educate the residents as to these resources.<sup>94</sup> The Department is required to adopt rules pursuant to ss. 120.536(1), and 120.54, F.S., for the receipt and processing of applications for funding of projects pursuant to this section.

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<sup>90</sup> ch. 531, F.S., “Weights and Measures Act of 1971.”

<sup>91</sup> s. 531.37(1), F.S.

<sup>92</sup> s. 531.61, F.S.

<sup>93</sup> s. 288.1175, F.S.

<sup>94</sup> s. 288.1175(3), F.S.

Applications must be submitted by October 1 of each year.<sup>95</sup> Current law does not prescribe a method for the applications to be submitted.

### Effect of Proposed Changes

The bill requires agriculture education and promotion facility applications to be *postmarked or electronically* submitted by October 1 of each year.

### ***Enforcement of Federal Worker Protection Regulations (Section 9)***

The Environmental Protection Agency (EPA) Agricultural Worker Protection Standard (WPS) is a federal regulation aimed at reducing the risk of pesticide poisoning and injury among agricultural workers and pesticide handlers.<sup>96</sup> The EPA Labeling Requirements for Pesticides and Devices reviews pesticide product labels as part of the licensing and registration process for pesticides.<sup>97</sup> The label on a pesticide package or container and the accompanying instructions are a key part of pesticide regulation.<sup>98</sup> The label provides information about how to handle and safely use the pesticide product and avoid harm to human health and the environment.<sup>99</sup>

Chapter 487, F.S., is the Florida law that governs pesticide regulation and safety. This chapter is made up of the Florida Pesticide Law, which regulates the distribution, sale, and use of pesticides and the Florida Agricultural Worker Safety Act, which ensures that agricultural workers employed in the state receive protection from agricultural pesticides. The Department is the primary agency responsible for administering these laws and the WPS, which was adopted by the Department in rule during the 1995-1996 fiscal year.<sup>100</sup>

### Effect of Proposed Changes

The bill removes the outdated reference to the 1995-1996 fiscal year in which the Department adopted the EPA regulations.

### ***Livestock Marks and Brands (Sections 31, 32, and 33)***

Current law requires any livestock owner who uses a mark or brand to identify their livestock to register the mark or brand by applying to the Department and paying a \$10 fee for each mark or brand.<sup>101</sup> Among other application requirements, the application must be made on a form prescribed by the Department and must be accompanied by a facsimile of the brand applied for.<sup>102</sup>

Registration of a mark or brand entitles the registrant to exclusive ownership and use of the mark or brand for a five year period.<sup>103</sup> Marks or brands may be renewed for successive five year periods upon application and payment of a \$5 renewal fee.<sup>104</sup>

Relating to the transfer of ownership of cattle, current law requires all purchasers of cattle, except for immediate slaughter, to remark or rebrand the same within 10 days or have on request a bill of sale

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<sup>95</sup> s. 288.1175(8), F.S.

<sup>96</sup> 40 C.F.R. Part 140.

<sup>97</sup> 40 C.F.R. s. 156.10.

<sup>98</sup> United States Environmental Protection Agency, Pesticide Registration, Labeling Requirements webpage, available at: <https://www.epa.gov/pesticide-registration/labeling-requirements> (last viewed February 7, 2017).

<sup>99</sup> *Id.*

<sup>100</sup> s. 487.2041, F.S.

<sup>101</sup> s. 534.021, F.S.

<sup>102</sup> *Id.*

<sup>103</sup> s. 534.041, F.S.

<sup>104</sup> *Id.*



from the rightful owner of marks and brands on cattle.<sup>105</sup> This requirement does not apply where an entire stock of cattle with the mark and brand or marks and brands carried by them is to be sold and conveyed.<sup>106</sup> The Department currently does not regulate transfer of ownership of cattle, and very few cattle owners rebrand purchased cattle.<sup>107</sup>

### Effect of Proposed Changes

The bill revises the requirement that an application be accompanied by a *facsimile* of the brand applied for, and instead allows a *detailed drawing* of the brand. According to the Department, this revision would update the statute to allow alternative methods to be offered to receive brand applications, such as e-mail of the application.<sup>108</sup>

The bill extends the current mark and brand renewal period of five years to every ten years, and removes the required \$5 renewal fee.

The bill repeals the section of law regarding the transfer of ownership of cattle.

### ***Food Safety Inspections (Section 34)***

The federal Food Safety Modernization Act (FSMA) authorizes new regulations for farmers who grow certain kinds of fresh produce (fruits and vegetables) and for certain facilities that process food for people to eat. The regulations focus on addressing food safety risks from microbial pathogen contamination.<sup>109</sup>

Pursuant to chapter 500, F.S., the Florida Food Safety Act, the Department is responsible for assuring the public of a safe, wholesome and properly represented food supply through permitting and inspection of food establishments and inspection of food products.<sup>110</sup> The Department is also required to promote uniformity of state and federal laws and their administration and enforcement.<sup>111</sup> Current law regarding the Department's food safety inspection responsibilities does not appear to provide for the inspection of raw agricultural commodities.

### Effect of Proposed Changes

The bill requires the Department to perform food safety inspection services where raw agricultural commodities are grown, produced, harvested, held, packed, or repacked.

### ***Assessment; funds; review of accounts; loans (Section 35)***

Regarding the Department's responsibility to administer agricultural commodity marketing orders for every person engaged in the production, distributing, or handling of agricultural commodities within this state, current law requires the director of the Division of Marketing and Development to file with the internal auditor of the Department a certification of conditions and circumstances justifying each contract or agreement entered into without competitive bidding.<sup>112</sup>

### Effect of Proposed Changes

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<sup>105</sup> s. 534.061, F.S.

<sup>106</sup> *Id.*

<sup>107</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 9 (Feb. 8, 2017).

<sup>108</sup> *Id.*

<sup>109</sup> "FDA Food Safety Modernization Act," Pub. L. No. 111-353, H.R. 2751111<sup>th</sup> Cong. (Jan. 4, 2011).

<sup>110</sup> s. 500.147, F.S.

<sup>111</sup> s. 500.02, F.S.

<sup>112</sup> s. 573.118, F.S.

The bill specifies that the Division of Fruit and Vegetables, rather than the Division of Marketing and Development, must file with the internal auditor a certification of conditions and circumstances justifying a contract or agreement that was entered into without competitive bidding. This modification to statute will reflect the actual division that oversees this function due to recent Department restructuring.

### ***Florida Forest Service Building Structures (Section 36)***

The primary responsibility of the Florida Forest Service (FFS) is the prevention, detection, and suppression of wildfires wherever they may occur.<sup>113</sup> In carrying out these responsibilities, the FFS is authorized to build structures<sup>114</sup> not to exceed a cost of \$50,000 per structure from existing resources on the following properties:

- Forest lands;
- Federal excess property; and
- Unneeded existing structures.<sup>115</sup>

These structures must meet all applicable building codes.<sup>116</sup> In 2011, the Department was granted the exclusive authority to enforce the Florida Building Code as it relates to Department wildfire and law enforcement facilities.<sup>117</sup>

### **Effect of Proposed Changes**

The bill extends authority to enforce the Florida Building Code as it relates to Department wildfire and law enforcement facilities to also include *other* Florida Forest Service facilities.

According to the Department, this will allow the use of one building permit authority for all Florida Forest Service facilities allowing for more consistency and efficiency during the building permit process while still maintaining the assurance that all construction is designed and constructed in compliance with the Florida Building Code.<sup>118</sup>

### ***Aquaculture Certificate of Registration (Section 37)***

The Florida Aquaculture Policy Act<sup>119</sup> defines “aquaculture” as the cultivation of aquatic organisms.<sup>120</sup> The act provides that “aquaculture products” are aquatic organisms and any product derived from aquatic organisms that are owned and propagated, grown, or produced under controlled conditions.<sup>121</sup> Such products do not include organisms harvested from the wild for depuration, wet storage, or relay for purification.<sup>122</sup>

Current law requires that any person engaging in aquaculture be certified by the Department.<sup>123</sup> An aquaculture producer certified under this law is authorized to sell aquaculture products (except shellfish, snook, fish of the genus *Micropterus*, and prohibited and restricted freshwater and marine

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<sup>113</sup> s. 590.01, F.S.

<sup>114</sup> Notwithstanding ch. 216, F.S., relating to the state agency planning and budgeting process, and ch. 255, F.S., relating to public property and publicly owned buildings.

<sup>115</sup> s. 590.02(4), F.S.

<sup>116</sup> *Id.*

<sup>117</sup> ch. 2011-206, Laws of Fla.; codified in s. 590.02(4)(b), F.S.

<sup>118</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 10 (Feb. 8, 2017).

<sup>119</sup> ch. 597, F.S.

<sup>120</sup> s. 597.0015(1), F.S.

<sup>121</sup> s. 597.0015(3), F.S.

<sup>122</sup> *Id.*

<sup>123</sup> s. 597.004(1), F.S.

species identified by rules of the Fish and Wildlife Conservation Commission) without restriction so long as the product origin can be identified.<sup>124</sup>

There appears to be confusion as to whether wholesale and/or retail dealers are required to hold an aquaculture certificate of registration in order to sell aquaculture products. It is the Department's position that an aquaculture certificate of registration is only issued to those who produce (grow) aquaculture products, therefore wholesale and retail dealers would not be required to hold that specific certificate of registration.<sup>125</sup>

### Effect of Proposed Change

The bill provides that aquaculture products (except shellfish, snook, fish of the genus *Micropterus*, and prohibited and restricted freshwater and marine species identified by rules of the Fish and Wildlife Conservation Commission) may be sold without restriction "*by an aquaculture producer certified pursuant to this section or by a dealer licensed pursuant to part VII of chapter 379.*"

According to the Department, this language would remedy the issue surrounding the interpretation of the statute, as this section is solely about the unrestricted sale of identified aquaculture products, not about who can sell these products at wholesale or retail.<sup>126</sup>

### ***Dealers in Agricultural Products (Section 38)***

Current law governing agricultural products dealers defines a "dealer in agricultural products" as "any person, partnership, corporation, or other business entity, whether itinerant or domiciled within this state, engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer's agent or representative and the buyer."<sup>127</sup>

The law finds that producers are subject to the possibility of serious economic harm in the event an agricultural products dealer defaults.<sup>128</sup> Therefore, it is necessary in the interest of the public welfare to regulate agricultural products dealers in this state.<sup>129</sup> The regulations include, but are not limited to, licensing,<sup>130</sup> bonding,<sup>131</sup> and penalties for violations of these requirements.<sup>132</sup> These provisions do not apply to dealers who pay at the time of purchase with United States cash currency or a cash equivalent, such as a money order, cashier's check, wire transfer, electronic funds transfer, or PIN-based debit transaction.<sup>133</sup>

### Effect of Proposed Changes

The bill exempts dealers in agricultural products who pay at the time of purchase with a credit card from certain dealer regulations of the Department.

### **CONCEALED CARRY LICENSURE (Section 39)**

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<sup>124</sup> s. 597.004(5)(a), F.S.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> s. 604.15(2), F.S.

<sup>128</sup> s. 604.151, F.S.

<sup>129</sup> *Id.*

<sup>130</sup> s. 604.17, F.S.

<sup>131</sup> s. 604.19, F.S.

<sup>132</sup> s. 604.30, F.S.

<sup>133</sup> s. 604.16(2), F.S.

## **Restoration of Firearms Eligibility**

Pursuant to the federal National Instant Criminal Background Check System Improvement Amendments Act of 2007,<sup>134</sup> current Florida law provides a process by which firearm disabilities may be removed for individuals who are prohibited under state and federal law<sup>135</sup> from purchasing a firearm due to a mental health or substance abuse commitment.<sup>136</sup> A person who has been adjudicated mentally defective or committed to a mental institution may petition the circuit court that made the adjudication or commitment for relief from the firearm prohibition.<sup>137</sup> A copy of the petition must be served on the state attorney for the county in which the person was adjudicated or committed.<sup>138</sup> The state attorney may object.<sup>139</sup> The court is required to grant relief if it finds, based on evidence presented regarding the petitioner's reputation, mental health record and criminal history record, the circumstances surrounding the firearm disability, and any other evidence, that the petitioner is not likely to act in a manner dangerous to public safety and that granting the relief would not be contrary to the public interest.<sup>140</sup> This will delete disqualifying substance abuse or mental health commitment orders from the MECOM database. If the final order denies relief, the petitioner may not petition again for one year.<sup>141</sup>

However, current law also requires the Department to issue a license to carry a concealed weapon or firearm if the applicant:

- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a three-year period immediately preceding the date on which the application is submitted;<sup>142</sup>
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless five years have elapsed since the applicant's restoration to capacity by court order;<sup>143</sup> or
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least five years prior to the date of submission of the application.<sup>144</sup>

As a result, current law governing concealed weapon and firearm eligibility provides conflicting mental health restoration processes. According to the Department, the federal restoration process in s. 790.065(2)(a)4.d., F.S., makes the three and five year waiting periods in current law obsolete.<sup>145</sup>

Current law requires the application for concealed weapon or firearm licensure to be completed, under oath, on a form adopted by the Department.<sup>146</sup> The Department is required to provide in its concealed

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<sup>134</sup> The NICS Improvement Amendments Act of 2007 (NIAA), Pub. L. No. 110-180, H.R. 2640, 110<sup>th</sup> Cong. (Jan. 8, 2008) seeks to address the gap in information available to the National Instant Criminal Background Check System (NICS) administered by the Federal Bureau of Investigation (FBI) about such prohibiting mental health adjudications and commitments and other prohibiting backgrounds in order to keep guns out of the hands of persons prohibited by federal or state law from receiving or possessing firearms. Since state submission of records to NICS is voluntary, the NIAA strives to increase the availability of state records through a series of financial incentives.

<sup>135</sup> 18 U.S.C. § 922(d)(4), prohibits possession of a firearm or ammunition by any person who has been "adjudicated as a mental defective" or involuntarily "committed to any mental institution.

<sup>136</sup> s. 790.065(2)(a)(4)(d), F.S.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> s. 790.06(2)(e), F.S.

<sup>143</sup> s. 790.06(2)(i), F.S.

<sup>144</sup> s. 790.06(2)(j), F.S.

<sup>145</sup> Email from Grace Lovett, Legislative Affairs Director, Florida Department of Agriculture & Consumer Services, *ch. 790 Changes*, (Feb. 21, 2017).

<sup>146</sup> s. 790.06(4)(c), F.S.

weapon or firearm license application a statement that the applicant has been furnished a copy of the chapter of law governing concealed weapon and firearm licensure, in addition to the current requirement to provide a copy of this chapter.<sup>147</sup>

Current law requires concealed weapon and firearm applicants to submit to the Department or an approved tax collector a nonrefundable license fee of up to \$60 if he or she has not previously been issued a statewide license, or a nonrefundable license fee of up to \$50 for renewal of a statewide license.<sup>148</sup>

### Effect of Proposed Changes

The bill aligns the three and five year restoration processes in current law with the federal restoration process in s. 790.065(2)(a)4.d., F.S. According to the Department, this will remove the conflicts between the two statutes and better inform the public of the restoration requirements.<sup>149</sup>

Specifically, the bill requires the Department to issue a license to carry a concealed weapon or firearm if the applicant has not been committed for the abuse of a controlled substance under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., or pursuant to the law of the state in which the commitment occurred is deemed not to be committed for the abuse of a controlled substance under this subparagraph.

For those who have been adjudicated an incapacitated person, instead of the five-year waiting period, the bill provides that an applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., or pursuant to the law of the state in which the adjudication occurred is deemed not to have been adjudicated an incapacitated person under this paragraph.

For those who have been committed to a mental institution under ch. 394, F.S., the bill provides that instead of the five-year waiting period, an applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., or pursuant to the law of the state in which the commitment occurred is deemed not to have been committed in a mental institution under this paragraph.

The bill authorizes the Department to provide in its concealed weapon or firearm license application statement that the applicant has been furnished a website link to the chapter of law governing concealed weapon and firearm licensure, in addition to the current requirement to provide a copy of this chapter.

The bill reduces the \$60 nonrefundable license fee for first time licenses from \$60 to \$55, and reduces the \$50 nonrefundable license fee for renewal licenses to \$45.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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<sup>147</sup> *Id.*

<sup>148</sup> s. 790.06(5)(b), F.S.

<sup>149</sup> *Id.*

As a result of the bill, the Department estimates the following total average loss in recurring revenues:

	<u>(FY 17-18)</u>	<u>(FY 18-19)</u>	<u>(FY 19-20)</u>
<b>Elimination of Multiple Licenses for Private Investigative Agency Managers</b>	<b>(\$6,562)</b>	<b>(\$6,748)</b>	<b>(\$6,748)</b>
<b>Elimination of Cattle Brand Registration</b>	<b>(\$7,647)</b>	<b>(\$7,647)</b>	<b>(\$7,647)</b>
<b>Exemption for Agriculture Dealer's Licenses</b>			
\$170 license fee (bonds \$5,000-\$9,999)			
185 exemptions x \$170	(\$31,450)	(\$31,450)	(\$31,450)
\$230 license fee (bonds \$10,000-\$14,999)			
106 exemptions x \$230	(\$24,380)	(\$24,380)	(\$24,380)
\$300 license fee (bonds \$15,000-\$100,000)			
763 exemptions x \$300	(\$228,900)	(\$228,900)	(\$228,900)
Administrative Fines	(\$20,000)	(\$20,000)	(\$20,000)
<b>Total</b>	<b>(\$304,730)</b>	<b>(\$304,730)</b>	<b>(\$304,730)</b>
<b>Elimination of Taximeters</b>			
<b>\$35 permit fee x 3,700 permits</b>	<b>(\$129,500)</b>	<b>(\$129,500)</b>	<b>(\$129,000)<sup>150</sup></b>
<b>Concealed Weapon License Fee Reduction</b>	<b>(\$1,795,130)</b>	<b>(\$1,706,115)</b>	<b>(\$1,652,295)<sup>151</sup></b>
<b>Total Revenue</b>	<b>(\$2,243,569)</b>	<b>(\$2,154,740)</b>	<b>(\$2,100,420)<sup>152</sup></b>

2. Expenditures:

The Department anticipates a reduction in agency expenditures as a result of the bill. These anticipated reductions include:

	<u>(FY 17-18)</u>	<u>(FY 18-19)</u>	<u>(FY 19-20)</u>
<b>Elimination of Multiple Licenses for Private Investigative Agency Managers</b>			
Background Check Expenditures	(\$1,419)	(\$1,605)	(\$1,605)
<b>Exemption for Agriculture Dealer's Licenses</b>			
Salaries and Benefits	(\$191,624)	(\$191,624)	(\$191,624)
Expenses (standard package x 4 FTEs)	(\$24,700)	(\$24,700)	(\$24,700)
HR Services (\$339 x 4 FTEs)	(\$1,356)	(\$1,356)	(\$1,356)
Non-Operating	(\$33,264)	(\$33,279)	(\$33,279)
<b>Total</b>	<b>(\$250,944)</b>	<b>(\$250,959)</b>	<b>(250,959)</b>
<b>Total Expenditures</b>	<b>(\$252,363)</b>	<b>(\$252,564)</b>	<b>(\$252,564)<sup>153</sup></b>
<b>Net Fiscal Impact to Department</b>	<b>(\$1,991,206)</b>	<b>(\$1,902,176)</b>	<b>(\$1,847,856)</b>

<sup>150</sup> Email from Grace Lovett, Legislative Affairs Director, Florida Department of Agriculture & Consumer Services, *Good news! --fee reduction*, (Mar. 8, 2017).

<sup>151</sup> *Id.*

<sup>152</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 12 (Feb. 8, 2017).

<sup>153</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2017 House Bill 467, p. 12-13 (Feb. 8, 2017).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates the requirement that managers have separate licenses to manage multiple branch offices of private investigative agencies. Each license fee is \$450.

The bill provides that partners and corporate officers who do not possess licenses subject to renewal under s. 493.6113, F.S., are exempt from the fingerprint retention requirements of the statewide automated biometric identification system established in s. 943.05(2)(b), F.S., and the ongoing costs associated with enrolling and retaining their fingerprints in the national retained print arrest notification program required under s. 493.6108, F.S.

The bill removes the \$5 cattle marks and brands renewal fee.

The bill exempts dealers in agricultural products who pay at the time of purchase with a credit card from certain dealer regulations of the Department and associated fees.

The bill reduces concealed weapon licensure and renewal fees by \$5.

D. FISCAL COMMENTS:

According to the Department, its assessment of the trust fund balance for the concealed weapon program over a number of years has found that the program can sustain a license fee reduction.<sup>154</sup> The Department has also assessed the General Inspection Trust Fund, which is impacted by the other reductions in revenue, and found that the trust fund can sustain the reductions.

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<sup>154</sup> Email from Grace Lovett, Legislative Affairs Director, Florida Department of Agriculture & Consumer Services, *Good news! --fee reduction*, (Mar. 8, 2017).