

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1275 Amusement Rides

**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee, Pritchett

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N	Thompson	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 0 N, As CS	White	Pigott
3) Commerce Committee			

### SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and inspectors on staff. All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector. DACS can investigate accidents, impose sanctions for violations, and close and impound amusement rides that are a danger to the public.

The bill:

- Includes amusement ride managers as a responsible party for ensuring compliance with state regulations;
- Exempts permanent rides from DACS inspection when inspected by an accredited trade organization;
- Separates the permitting process for permanent and temporary amusement rides, and streamlines the application process;
- Authorizes DACS to revise the 6-month inspection interval at permanent facilities;
- Requires ride documents to be submitted to DACS in electronic format;
- Broadens DACS rulemaking authority related to establishing certain exemptions;
- Removes an exemption for museums and other exhibition related institutions;
- Conforms state standards for testing, materials, electric, and fire protection to national standards;
- Requires signage containing DACS contact information to be displayed at ride events;
- Requires certification to DACS before a modified ride is placed back in operation;
- Grants subpoena powers to DACS;
- Criminalizes the refusal or failure to testify pursuant to a DACS subpoena;
- Increases the limit for administrative fines from “not to exceed \$2,500” to “not to exceed \$10,000” per violation; and
- Allows DACS to impose an additional \$10,000 fine for violations resulting in serious injury or death.

The bill will have an insignificant fiscal impact on state government and the private sector. The bill is not expected to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2020.

### FULL ANALYSIS

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

STORAGE NAME: h1275c.ANR

DATE: 2/4/2020

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

The Department of Agriculture and Consumer Services (DACS) is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and an inspector on staff. The Bureau of Fair Rides Inspection within DACS is required to inspect, investigate, and enforce the regulations related to amusement rides.<sup>1</sup>

Amusement rides regulated in the state of Florida fall into two categories:

- Temporary rides are those that are regularly relocated with or without assembly; and
- Permanent rides are those that are not regularly relocated.<sup>2</sup>

All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector.<sup>3</sup>

DACS also inspects go-kart tracks, water-related amusement rides and zipline courses operating in the state.<sup>4</sup>

In addition, DACS investigates accidents involving amusement rides and has the authority to impose sanctions on amusement ride owners for violation of the law. DACS can close and impound amusement rides that pose an immediate serious danger to public health, safety and welfare.<sup>5</sup>

#### **Adoption of Standards**

DACS is required to adopt by rule standards for amusement rides which are the same as or similar to the following national standards:

- American Society for Testing and Materials (ASTM) Committee F-24 Standards on Amusement Rides and Devices.
- National Electric Code Handbook, Article 525.
- National Fire Protection Code 101 (chapters 8-4.6 and 9-4.6).
- ASTM Standards: E543 Practice for Determining the Qualification of Nondestructive Testing Agencies.
- American Society for Nondestructive Testing (ASNT) Document Recommended Practice for Nondestructive Testing Personnel Qualification and Certification (SNT-TC-1A).<sup>6</sup>

DACS is authorized to adopt rules necessary to effectuate its statutory duties in the interest of public health, safety, and welfare and to promote patron safety in the design, construction, assembly, disassembly, maintenance, and operation of amusement rides in this state.<sup>7</sup>

There are no mandatory national safety standards for U.S. amusement rides, but the amusement ride industry has developed safety standards through the ASTM F-24 committee. The ASTM F-24 committee is responsible for standards related to amusement rides and devices. This includes

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<sup>1</sup> S. 616.242, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Florida Department of Agriculture and Consumer Services, Fair Rides Inspection, <https://www.fdacs.gov/Business-Services/Fairs/Fair-Rides-Inspection> (last visited Jan. 22, 2020).

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

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

<sup>6</sup> S. 616.242(4), F.S.

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

waterslides, inflatables, go-karts, ziplines and challenge courses, trampoline courts, and a growing list of commercially-operated amusement experiences.<sup>8</sup>

## Annual Permits

Amusement rides may not operate without an annual permit. To apply, an owner must submit to DACS a written application on a form prescribed by DACS rule, and include:

- The legal name, address, and primary place of business of the owner.
- A description, manufacturer's name, serial number, model number and, if previously assigned, the United States Amusement Identification Number of the amusement ride.
- A valid certificate of insurance for each amusement ride.
- An affidavit of compliance (AOC) that the amusement ride was inspected and in general conformance with the law and applicable rules.
  - The AOC must be executed by a professional engineer or a qualified inspector no earlier than 60 days before, but not later than, the date of filing of the application with DACS.
  - The owner is required to request inspection and permitting of the amusement ride within 60 days of the date of filing the application with DACS.
  - DACS is required to inspect and permit the amusement ride within 60 days after the filing of the application with DACS.
- If required, an affidavit of nondestructive testing dated and executed no earlier than 60 days before, but not later than, the date of the filing of the application with DACS.
  - The owner is required to request inspection and permitting of the amusement ride within 60 days of the date of filing the application with DACS.
  - DACS is required to inspect and permit the amusement ride within 60 days after the filing of the application with DACS.
- A request for inspection.<sup>9</sup>

Upon request, the owner must, at no cost to DACS, provide DACS with a copy of the manufacturer's current recommended operating instructions in the possession of the owner, the owner's operating fact sheet, and any written bulletins in the possession of the owner concerning the safety, operation, or maintenance of the amusement ride.<sup>10</sup>

An annual permit must be issued to the owner when a completed application has been received, the amusement ride has passed DACS inspection, and all applicable fees, as set by DACS rule,<sup>11</sup> have been paid.<sup>12</sup>

The annual permit:

- Is valid for 1 year from the date of issuance;
- Is not transferable; and
- Must be displayed on the amusement ride in a place that is visible to patrons.<sup>13</sup>

According to DACS, as of fiscal year 2018-2019, it had issued approximately 1,700 permits.<sup>14</sup>

## Nondestructive Testing

In order to operate an amusement ride the owner must at all times have a current affidavit of nondestructive testing from a professional engineer or qualified inspector. The affidavit provides that

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<sup>8</sup> ASTM International, *Committee F24 on Amusement Rides and Devices*, <https://www.astm.org/COMMITTEE/F24.htm> (last visited Jan. 23, 2020).

<sup>9</sup> S. 616.242(5), F.S.

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

<sup>11</sup> R. 5J-18.012, F.A.C.

<sup>12</sup> S. 616.242(5), F.S.

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

<sup>14</sup> Email from Richard Kimsey, Assistant Director, Division of Consumer Services, Department of Agriculture and Consumer Services, Re: Amusement Rides Permitting and Inspection Process (Jan. 24, 2020).

the amusement ride has undergone nondestructive testing for metal fatigue at least annually.<sup>15</sup> Nondestructive testings must be performed by a technician who meets the national standards for amusement rides provided in DACS rule.<sup>16</sup>

Nondestructive testing for metal fatigue must include visual and nonvisual testing, and can be conducted more often than annually, if required by any rule adopted under this section, the manufacturer of the amusement ride, or the professional engineer or qualified inspector executing the affidavit of nondestructive testing.<sup>17</sup>

An affidavit of nondestructive testing must provide:

- That the amusement ride was inspected in person by the affiant.
- That all nondestructive testing requirements are current.
- That the nondestructive testing was performed by a qualified nondestructive testing technician.
- The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.
- The type of nondestructive testing required or recommended by the manufacturer.
- The frequency of the nondestructive testing required or recommended by the manufacturer.
- The components of the amusement ride for which the affiant has recommended or required nondestructive testing.
- The type of nondestructive testing required or recommended by the affiant.
- The frequency of the nondestructive testing as required or recommended by the affiant.
- That visual nondestructive testing is adequate for the amusement ride to be in general conformance with the requirements of this section, and all applicable rules, if only visual nondestructive testing is required or recommended by either the manufacturer or the affiant.<sup>18</sup>

Nondestructive testing is not required for:

- Fun houses;
- Houses of mirrors;
- Haunted houses;
- Mazes;
- Wave pools;
- Wave-making devices;
- Kiddie pools;
- Slides that are fully supported by an earthen mound;
- Nonmotorized playground equipment that requires a manager; or
- Lazy-river-type nonmotorized floating carriers propelled by water.<sup>19</sup>

## Inspections

In order to obtain an annual permit, amusement rides must be inspected by DACS and receive an inspection certificate. In addition, the following requirements must be met:

- Permanent amusement rides must be inspected semiannually and receive an inspection certificate; and
- Temporary amusement rides must be inspected and receive an inspection certificate each time the ride is set up or moved to a new location in this state unless the ride is:
  - Used at a private event;
  - A simulator, the capacity of which does not exceed 16 persons; or
  - A kiddie ride used at a public event, provided that there are no more than three amusement rides at the event, none of the kiddie rides at the event exceeds a capacity of 12 persons, and the ride has an inspection certificate that was issued within the preceding 6 months.<sup>20</sup>

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<sup>15</sup> S. 616.242(6), F.S.

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

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

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

<sup>19</sup> *Id.*

<sup>20</sup> S. 616.242(7), F.S.

To obtain a DACS inspection, the owner must submit a written request to DACS, on a DACS prescribed form, and provide the following information:

- The legal name, address, and primary place of business of the owner.
- A description, manufacturer's name, serial number, model number, and the United States Amusement Identification Number, if previously assigned, of the amusement ride.
- For a temporary amusement ride, for each time the amusement ride is set up or moved to a new location, the date of first intended use at the new location and the address or a description of the new location.<sup>21</sup>

For permanent amusement rides, a request for inspection must be received by DACS at least 15 days before the:

- Owner's planned opening date; or
- Expiration of the prior inspection certificate.<sup>22</sup>

For temporary amusement rides, the request for inspection must be received by DACS each time the amusement ride is set up or moved to a new location at least 14 days before the date of first intended use at the new location.<sup>23</sup>

In both cases, if the request for inspection is received late, DACS is authorized to inspect the amusement ride and charge a late fee. In addition, if the owner fails to timely cancel a Request for Inspection, requests holiday or weekend inspections, or is required to have a replacement United States Amusement ID Program (USAID) plate issued by DACS, the owner may be charged an appropriate fee.<sup>24</sup>

Inspections are assigned on a first come, first served basis, and overflow requests will be scheduled on the closest date to the date for which the inspection was requested. Upon failure of an amusement ride to pass an inspection, the owner may request in writing a reinspection. DACS is required to reinspect the ride as soon as practical following receipt of the:

- Written request; and
- Applicable reinspection fees.<sup>25</sup>

Upon passage of inspection and payment of the applicable fee, DACS must issue an inspection certificate containing the following information:

- Date of inspection;
- Site of the inspection; and
- Name of the inspector.<sup>26</sup>

Inspection certificates are valid only for the site stated on the certificate, for a period of not more than 6 months from the date of issuance, are not transferable, and must be displayed on the amusement ride at a place readily visible to patrons.<sup>27</sup>

According to DACS, during fiscal year 2018-2019, it inspected 8,689 amusement rides, and identified 19,249 deficiencies.<sup>28</sup>

## Fees

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<sup>21</sup> *Id.*

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

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

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

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

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

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

<sup>28</sup> The Florida Department of Agriculture and Consumer Services, *Bureau of Fair Rides Inspection Statistical Data*, Inspection/Deficiency Statistics.

DACS is required by rule to establish fees to cover the costs and expenditures associated with the fair rides inspection program, including all direct and indirect costs. If there is not sufficient general revenue appropriated by the Legislature, the industry is required to pay for the remaining cost of the program.<sup>29</sup>

Fees must be deposited in the General Inspection Trust Fund. Any owner of an amusement ride who has not paid all the fees required under this section or who has any unpaid fine outstanding under this section are prohibited from operating any amusement ride in this state until the fees and fines have been paid to DACS.<sup>30</sup>

DACS has adopted the following fees:<sup>31</sup>

Annual permit for any amusement ride	\$500.00
Annual permit for any bungy jump	\$500.00
Inspection fee for each inspection of a kiddie amusement ride	\$45.00
Inspection fee for each inspection of a non-kiddie amusement ride	\$90.00
Inspection fee for each inspection of a super amusement ride	\$175.00
Inspection fee per go kart, in addition to the track inspection fee	\$10.00
Reinspection fee (return to site)	\$500.00
Reinspection fee (return on-site)	\$100.00
Fee to replace a lost U.S. Amusement Identification (USAID) plate	\$100.00
Fee per amusement ride for late inspection request	\$100.00
Fee per amusement ride for failure to cancel inspection request	\$100.00
Additional fee per amusement ride for inspection on weekend or state holiday	\$75.00

## Insurance

In order to obtain a permit to operate an amusement ride in Florida, the ride owner must obtain injury liability insurance in the following amounts:

- One million dollars minimum per occurrence; and
- One million dollars in the aggregate.<sup>32</sup>

The policies must be procured from an insurer that is:

- Licensed to transact business in this state; or
- Approved as a surplus lines insurer.<sup>33</sup>

The insurance requirements do not apply to a governmental entity that is covered by the provisions of s. 768.28(16), F.S., which authorizes the state and its agencies and subdivisions to be:

- Self-insured,
- Enter into risk management programs,
- Purchase liability insurance for whatever coverage they may choose, or
- Have any combination thereof.<sup>34</sup>

## Exemptions

The regulations related to amusement rides do not apply to the following:

- Permanent facilities that employ at least 1,000 full-time employees and that maintain full-time, in-house safety inspectors;
- Any playground operated by a school, local government, or business licensed under chapter 509, F.S., if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills, or excitement;

<sup>29</sup> S. 616.242(8), F.S.

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

<sup>31</sup> R. 5J-18.012, F.A.C.

<sup>32</sup> S. 616.242(8), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

- Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;
- Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition, and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show;
- Skating rinks, arcades, laser or paint ball war games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, airboats, helicopters, airplanes, parasails, hot air or helium balloons whether tethered or untethered, theatres, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, side shows, live animal rides, or live animal shows;
- Go-karts operated in competitive sporting events if participation is not open to the public;
- Nonmotorized playground equipment that is not required to have a manager;
- Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less;
- Motorsports facilities described in s. 549.09(1)(a), F.S., when such facilities are operating cars, trucks, or motorcycles only;
- Battery-powered cars or other vehicles that are designed to be operated by children seven years of age or under and that cannot exceed a speed of four miles per hour;
- Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour;
- Water-related amusement rides operated by a business licensed under chapter 509, F.S., if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates;
- Amusement rides at a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates; and
- Nonprofit permanent facilities registered under chapter 496, F.S., which are not open to the general public.<sup>35</sup>

DACS is authorized to establish by rule exemptions from the regulations on amusement rides for “nonmotorized or human-powered amusement rides or coin-actuated amusement rides.”<sup>36</sup>

## Inspection Standards

Amusement rides are required to adhere to the following inspection standards:

- All mechanical, structural, and electrical components that affect patron safety must be in good working order.
- All control devices, speed-limiting devices, brakes, and safety equipment designated by the manufacturer must be in good working order.
- Parts must be properly aligned, and not be bent, distorted, cut, or otherwise injured to force a fit.
- Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed where required for safe operation.
- Before being used by the public, an amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means so as to be stable under all operating conditions.
- Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.

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<sup>35</sup> S. 616.242(10), F.S.

<sup>36</sup> *Id.*

- Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.
- An amusement ride powered so as to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.
- The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, with no projecting studs, bolts, screws, or other projections which might cause injury.
- Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions required or recommended for the amusement ride by the manufacturer must be prominently displayed at the patron entrance of each amusement ride.
- All amusement rides must comply with the section of law governing amusement rides and related rules.<sup>37</sup>

## Major Modifications

After an amusement ride has undergone a major modification, and prior to the time it is placed in operation, a Florida Licensed professional engineer must certify that the amusement ride is in compliance with the entire section of law governing amusement ride safety, and all related rules.<sup>38</sup>

## Entry for Inspections

Authorized DACS employees may enter unannounced and inspect amusement rides at any time in a reasonable manner. Such employees are authorized to:

- Question any owner or manager;
- Inspect, investigate, photograph, and sample all pertinent places, areas, and devices; and
- Conduct all appropriate tests including nondestructive testing.<sup>39</sup>

DACS is authorized to impose fees for unannounced inspections and recover the cost of related tests.<sup>40</sup>

## Reporting and Investigating Accidents and Defects

Accidents that the owner or manager have knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron is transported to a hospital, as defined in chapter 395, F.S., must be reported by the owner or manager to DACS. Such reporting must be conducted by telephone within four hours after the accident, and followed up by a written report to DACS within 24 hours after the accident.

Any mechanical, structural, or electrical defects affecting patron safety for which an amusement ride is closed to patron use for more than four hours must be reported by the owner or manager to DACS by telephone or facsimile within eight hours after the closing of the ride. A written report of the closing must be filed by the owner or manager with DACS within 24 hours after the ride closes.

In addition, DACS is authorized to impound amusement rides that have:

- Been involved in an accident for which a patron is transported to a hospital as defined in chapter 395, F.S.;
- A mechanical, structural, or electrical defect affecting patron safety.

In cases of impoundment, DACS is authorized to impound any other amusement ride of a similar make and model, and perform all necessary tests to determine the cause of the accident, defect, or safety of

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<sup>37</sup> S. 616.242(11), F.S.

<sup>38</sup> S. 616.242(12), F.S.

<sup>39</sup> S. 616.242(13), F.S.

<sup>40</sup> *Id.*



the ride and any other ride of a similar make and model. The ride owners are responsible for the cost of impoundment and relating testing.<sup>41</sup>

According to DACS, in fiscal year 2018-2019, there were 191 amusement ride accidents reported.<sup>42</sup>

### **Owner/Manager Inspections**

Prior to opening each day of operation, and before any inspection by DACS, the owner or manager of an amusement ride is required to inspect and test the ride to ensure compliance with all requirements of the law governing amusement rides. Each inspection must be recorded on a form prescribed by DACS rule and signed by the person who conducted the inspection.<sup>43</sup>

In lieu of using the DACS form, an owner or manager may request approval of an alternative form, which must include at least the information required on the DACS form. Inspection records of the last 14 daily inspections must be:

- Kept on site by the owner or manager; and
- Made immediately available to DACS upon request.<sup>44</sup>

### **Employee Training**

Owners or managers of amusement rides are required to:

- Maintain a record of employee training for each employee who is authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride; and
- Certify that each employee is trained on the amusement ride for which the employee is responsible.<sup>45</sup>

The training record must be kept on site by the owner or manager and made immediately available to DACS upon request. In lieu of using the DACS form, the owner or manager may request approval of an alternative form.<sup>46</sup>

Training is prohibited when an amusement ride is open to the public, unless the training is conducted under the supervision of an employee who is trained in the operation of that ride.<sup>47</sup>

### **Enforcement and Penalties**

DACS has the authority to deny, suspend for up to one year, or revoke, any permit or inspection certificate. In addition, DACS may impose an administrative fine pursuant to s. 570.971, F.S., not to exceed \$2,500 per violation, for each day the violation exists, against the owner of the amusement ride if DACS finds that:

- An amusement ride has operated or is operating:
  - With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manager has knowledge, or, through the exercise of reasonable diligence, should have knowledge;
  - In a manner or circumstance that presents a risk of serious injury to patrons;
  - At a speed in excess of its maximum safe operating speed;
  - In violation of DACS rules or state law; or
  - In violation of an order of DACS or any court; or
- A manager in the course of his or her duties is under the influence of drugs or alcohol.<sup>48</sup>

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<sup>41</sup> S. 616.242(14), F.S.

<sup>42</sup> The Florida Department of Agriculture and Consumer Services, *Bureau of Fair Rides Inspection Statistical Data*, Inspection/Deficiency Statistics.

<sup>43</sup> S. 616.242(15), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> S. 616.242(16), F.S.

<sup>46</sup> *Id.*

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

<sup>48</sup> S. 616.242(19), F.S.

DACS is required, in its order suspending a permit or inspection certificate, to specify the period during which the suspension is effective, which may not exceed 1 year. The permit or inspection certificate must remain suspended during the period, subject to any rescission or modification of the order by DACS, or modification or reversal by the court, prior to expiration of the suspension period.<sup>49</sup>

The owner of an amusement ride, whose permit or inspection certificate has been revoked by DACS, may not apply for another permit or inspection certificate for the amusement ride within 2 years after the date of the revocation. If judicial review is sought and a stay of the revocation is obtained, the owner may not apply for another permit or inspection certificate within two years after the final order of the court sustaining the revocation.<sup>50</sup>

During the period of suspension or revocation, the owner may not engage in or attempt to engage in any operation of the amusement ride for which a permit or inspection certificate is required.<sup>51</sup>

When a DACS imposed suspension period has expired, the owner may reapply for a new permit or inspection certificate by submitting a complete application to DACS.<sup>52</sup>

In addition, and notwithstanding the existence of any adequate remedy at law, DACS is authorized to bring an action to enjoin the violation of any provision, or rules adopted, under this section, in the circuit court of the county in which the violation occurs or is about to occur. Upon competent and substantial evidence presented by DACS, the court is required to immediately issue the temporary or permanent injunction sought by DACS without bond.<sup>53</sup>

In addition to the penalties, DACS is authorized to issue a letter of warning to the owner of the ride specifying the violation and requiring immediate corrective action.<sup>54</sup>

Any person who knowingly violates any of the provisions of the regulations governing amusement rides commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.<sup>55</sup>

According to DACS, during fiscal year 2018-2019, it issued 169 stop operation orders, and 801 out-of-service tags.<sup>56</sup>

## Consumer Product Safety Commission

The Consumer Product Safety Commission (Commission) is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the agency's jurisdiction. The Consumer Product Safety Act (Act)<sup>57</sup> authorizes the Commission to investigate serious accidents involving portable carnival rides, inflatables, and go-karts. Amusement rides operated at permanent parks ("permanently fixed to a site") are exempt from compliance with the Act.<sup>58</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> The Florida Department of Agriculture and Consumer Services, *Bureau of Fair Rides Inspection Statistical Data*, Inspection/Deficiency Statistics.

<sup>57</sup> 15 U.S.C. ch. 47 § 2051 et seq.

<sup>58</sup> Safeparks, *United States Consumer Product Safety Commission*, <https://saferparks.org/agency/united-states-consumer-product-safety-commission> (last visited Jan. 22, 2020).

Ride manufacturers or owner/operators are required to notify the Commission if they obtain information which reasonably supports the conclusion that a portable amusement ride, inflatable device, go-kart or other non-exempt amusement device:

- Fails to comply with a consumer product safety standard or banning regulation established by the omission or a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the Act;
- Contains a defect which could create a substantial product hazard described in section 15(a)(2) of the Act; or
- Creates an unreasonable risk of serious injury or death.<sup>59</sup>

The Commission does not provide for an inspection program.

## Other States

According to a consumer safety organization, Safeparks.org, the research of amusement ride laws in 50 states found the following:<sup>60</sup>

Degree of Oversight	Number of States
Comprehensive Government Oversight	20 states (including Florida)
Partial Government Oversight	12 states
Private Sector Oversight	9 states
No State Agency with Jurisdiction	8 states
Electrical Inspections Only	1 state

## Proposed Changes

The bill makes several changes to the framework of regulations that govern the safety standards for amusement rides in the state.

## Managers

The bill includes amusement ride “managers” as a responsible party for ensuring compliance with state law governing safety standards for amusement rides.

## Inspection and Permitting Process

The bill streamlines the permitting application and issuance process, removes the requirement for an inspection certificate, and sets deadlines for inspections by DACS prior to the issuance of a permit for operation. Additionally, the bill adds an exemption from DACS inspection for permanent rides that prove they were inspected and certified by an accredited trade organization.

The bill separates the permitting process for permanent amusement rides from temporary amusement rides, and distinguishes the two by:

- Establishing that a permanent ride permit is valid for 1 year, and a temporary ride permit is valid for 6 months, or until the temporary ride is moved; and
- Requiring permanent ride and temporary ride applications for permit to be submitted 15 and 14 days prior to their opening dates, respectively.

The bill defines an “amusement ride event” as an event where an amusement ride is operated at a specific location and date as listed on an annual permit application or on a temporary amusement ride permit application.

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<sup>59</sup> *Id.*

<sup>60</sup> Safeparks, *U.S. Federal and State Amusement Ride Regulation*, <https://safeparks.org/regulation/agencies> (last visited Jan. 22, 2020).

The bill defines a "temporary amusement ride permit" as the United States Amusement Identification Number and the decal issued by DACS, which signify that the temporary amusement ride has been permitted by DACS.

In order to align inspection dates at permanent facilities, the bill authorizes DACS to shorten or extend the 6-month inspection interval. Fees for rides with shortened inspection intervals must be prorated, and extensions of inspection intervals may not exceed two months.

The bill requires a ride's operating instructions, fact sheet, and any bulletins concerning the ride to be submitted to DACS in electronic format as part of the permitting process.

### **Fees**

The bill clarifies DACS authority to establish by rule fees to cover the costs and expenditures associated with the fair rides inspection program, and the requirement that the industry pay the remaining cost of the program if there is not sufficient general revenue appropriated by the Legislature.

### **Exemptions**

The bill broadens DACS's rulemaking authority to establish exemptions for types of rides from the amusement ride regulations by deleting the restriction that such exemptions only apply to nonmotorized or human-powered amusement rides or coin-actuated amusement rides.

The bill removes a blanket exemption from the amusement ride regulations for museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts. As a result, these institutions would be required to comply with applicable licensing and permitting requirements, including being subject to fees and fines.

### **Adoption of Standards**

The bill conforms state standards that DACS is required to adopt by rule for testing and materials, electric code, and fire protection, to recently revised national standards.

### **Inspection Standards**

The bill clarifies inspection standards and revises the requirement that an amusement ride be inspected by DACS in accordance with the statutory standards, and instead provides that rides presented for inspection as ready for operation must comply with the standards.

### **Operating Requirements**

The bill requires ride owners and operators to display DACS's contact information for ride patrons' benefit. Specifically, a sign containing the DACS toll-free number and informing for patrons to contact DACS with complaints or concerns regarding the operation of amusement rides must be posted in a manner conspicuous to the public at each entrance of a nonpermanent amusement facility, unless such facility or event is exempt. The bill requires DACS to prescribe by rule specifications for such signs.

After an amusement ride has undergone a major modification and before it is placed in operation, the bill requires upon request, the owner or manager of the amusement ride to provide to DACS a copy of the required certification and all evidence used by the professional engineer to prepare the certification.

The bill removes the four-hour threshold after which the owner or manager must report a mechanical, structural, or electrical defect, and includes "failures" to the types of electrical deficiencies that can trigger a reporting requirement.

In addition, the bill requires the affected ride to remain closed until repairs are reviewed and the ride is released for operation by DACS.

## Enforcement

The bill increases the limit for administrative fines from “not to exceed \$2,500” to “not to exceed \$10,000” per violation. The bill adds as a violation the presentment of a ride for inspection by DACS that has a defect that is known, or should be known. The bill adds an additional administrative fine of \$10,000, or more, for any violation resulting in serious injury or death to a patron.

Additionally, the bill provides DACS with certain investigative and subpoena powers for application in its investigations performed under the amusement ride law. A person’s refusal or failure to testify pursuant to such subpoena is guilty of a second-degree misdemeanor, punishable as provided in s. 775.083, F.S.

Specifically, in any examination or investigation conducted by DACS or a DACS appointed examiner, DACS is authorized to:

- Administer oaths,
- Examine and cross-examine witnesses,
- Receive oral and documentary evidence,
- Subpoena witnesses,
- Compel witness attendance and testimony, and
- Require by subpoena the production of documents or other evidence that it deems relevant to the inquiry.

If any person refuses to comply with the subpoena or to testify as to any relevant matter, the Circuit Court of Leon County, or the circuit court of the county in which such examination or investigation is being conducted or the county in which such person resides pursuant to an application filed with DACS, is authorized to issue an order requiring such person to comply with the subpoena and to testify. Failure to obey an order may be punished by the court as contempt.

Subpoenas must be served, and proof of such service must be made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, must be allowed as they are for testimony in a circuit court. Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation, or hearing commits perjury will be punished accordingly.

Any person who asks to be excused from attending or testifying or from producing any documents or other evidence in connection with any examination, hearing, or investigation on the ground that the testimony or evidence required may tend to incriminate him or her or subject him or her to a penalty or forfeiture and who, nevertheless, is directed by DACS and the Department of Legal Affairs to give such testimony or produce such evidence must comply with that directive. The person may not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have testified or produced evidence, and no testimony given or evidence produced may be received against him or her in any criminal action, investigation, or proceeding.

However, a person testifying is not exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence given or produced is admissible against him or her in any criminal action, investigation, or proceeding concerning such perjury; and the person is not exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred or to be conferred pursuant to this chapter.

Any such individual may execute, acknowledge, and file with DACS a statement expressly waiving such immunity or privilege with respect to any transaction, matter, or thing specified in such statement; and upon such filing, the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and, if so received or produced, such individual is not entitled to any immunity or privileges on account of any testimony he or she may so give or evidence so produced.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 616.242, F.S., relating to amusement rides.

Section 2. Provides an effective date of July 1, 2020.

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

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

1. Revenues:

According to DACS, it will receive revenue from approximately 21 facilities that will lose their exemption for inspections in a total amount of approximately \$14,280.<sup>61</sup> However, the increase in new exemptions for inspections will decrease revenue collections and may be off set.

2. Expenditures:

According to DACS, it will incur expenditures based on the cost of the safety signage at each event, including 1,622 events times three signs per event times \$0.25 per sign, which would be a total cost to DACS of approximately \$1,220.<sup>62</sup> The bill has an indeterminate fiscal impact on DACS for the increased cost to inspect facilities that lose exemptions.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

There may be a negative fiscal impact on the businesses that will no longer be exempt from the regulations.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill revises the following provision relating to DACS rulemaking:

- Revises national standards that must be adopted by DACS;

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<sup>61</sup> Florida Department of Agriculture and Consumer Services, agency Analysis of 2020 House Bill 1275, p. 2 (Jan. 17, 2020).

<sup>62</sup> *Id.*

- Creates a separate application and permitting process for permanent and temporary amusement ride permits;
- Requires DACS to adopt rules detailing signage to be posted at each amusement ride event;
- Requires DACS to adopt rules specifying acceptable trade organizations that may inspect certain permanent amusement rides;
- Deletes the inspection certificate process and all related rulemaking authority; and
- Broadens rulemaking authority to establish exemptions for types of rides from the amusement ride regulation.

There is sufficient rulemaking authority in the bill and current law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 3, 2020, the Agriculture & Natural Resources Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that a sign containing the toll-free number of the department and informing patrons that they may contact the department with complaints or concerns regarding the operation of amusement rides must be posted in a manner conspicuous to the public at each entrance of a nonpermanent amusement facility.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Appropriations Subcommittee.