

# Florida Department of Agriculture and Consumer Services Agency Sunset Review Interim Report

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*Prepared for*  
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*Prepared by*  
Committee on Commerce



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## **Findings and Recommendations**

The services provided by the divisions of Licensing, Standards and Consumer Services within the Department of Agriculture and Consumer Services (department) are necessary to protect the public from threat to its health, safety and welfare or to prevent unethical, deceptive and misleading business practices by the businesses they regulate.

These services are funded primarily with Trust Fund Revenues through specific regulatory fees or service charges. Exceptions include:

- The Weights and Measures program within the Division of Standards is supported primarily by General Revenue, and is supplemented by fees and excess revenue from the Petroleum Inspection Program.
- Currently, the Liquid Petroleum Gas Inspection and the Fair Rides Inspection programs are not self-supporting, and are supplemented by excess revenue from the Petroleum Inspection Program.
- The Division of Consumer Services is funded primarily by fees imposed on the businesses required to be registered by the division with the excess revenue from some programs going to cover the costs of other programs. General Revenue is used to support its operations associated with processing consumer complaints related to non-regulated activities, enforcement of the Lemon Law and price-gouging statutes.
- The registration fees assessed against businesses regulated by the Division of Consumer Services are generally sufficient to fund the services provided by the division, with the exception of Intrastate Movers. General Revenue subsidizes the costs of these regulatory expenses.
- Travel Independent Agents are required to register with the department but are not assessed a registration fee. Associated regulatory costs are funded by fees and fines assessed against Sellers of Travel.

While there may appear to be a duplication between the department and the Department of Legal Affairs in enforcing the “Lemon Law” and “price gouging” statutes, each department’s actions appear to be complementary, and the respective departments coordinate their activities to avoid duplication.

Both on its own initiative and as a result of changes in the law, the department has implemented two strategies to reduce costs associated with processing annual registrations, registration renewals and related documents, thereby allowing resources to be allocated to enforcement activities and funding for systems designed to increase efficiency.

- LP Gas renewal licenses, Motor Vehicle Repair Shop registrations and Game Promotion packages may now be submitted on-line, thereby increasing the efficiency of processing such submissions.
- Since 2003, Motor Vehicle Repair Shops are required to register biennially, rather than annually, thereby reducing staff resource committed to registration activities.

As to the department’s advisory councils and committees, the Florida Propane Gas, Safety, Education and Research Council and the Florida Liquid Propane Gas Advisory Board are comprised of members from the LP gas industry. Five members of the 15 member council also serve on the 9 member board. However, the

department reports that the latter did not have any expenses for the past 3 fiscal years. Consequently, there would be no cost savings if the two councils were combined.

In response to these findings, this report recommends:

The statutory provisions authorizing the programs and activities within the divisions of Licensing, Standards, and Consumer Services within the Department of Agriculture and Consumer Services be retained.

In addition, the department's advisory councils and commissions related to the divisions of Licensing, Standards, and Consumer Services within the Department of Agriculture and Consumer Services be retained.

To address funding issues, the Legislature should:

- Require the department to assess service charges to businesses that receive service through the Bureau of Weights and Measures;
- Increase application and renewal fees for the liquefied petroleum business licenses and fair rides inspection fees, sufficient to fund the department's cost of providing services;
- Impose a registration fee on Travel Independent Agents, commensurate with the cost to the department for processing registrations; and
- Increase fees on Intrastate Movers to enable the program to be self-supporting.

To address efficiency issues, the Legislature should:

- Provide the department with the authority to spend the proceeds from the concealed weapons license fees to meet the staffing needs of the program;
- Provide additional funds or funding authority to further implement on-line registration for businesses regulated by the Division of Consumer Services; and
- Consider requiring biennial registration, rather than annual registration, of the businesses regulated by the Division of Consumer Services, as determined appropriate by the department.

While the necessity and efficiency of regulating the 10 business sectors through registration with the department is defensible, the Legislature should consider whether dance studios should be required to be registered with the department. If the registration requirement is removed, the current statutory requirements relating to contracts and prohibited acts should be retained.

Appendix B contains a list of criteria that may be useful in facilitating this evaluation. Also see the Florida Sunrise Act (s.11.62, F.S., included in Appendix C).

## **Background**

Sections 11.901-.920, F.S., are known as the Florida Government Accountability Act. Under this act, most state agencies and their respective advisory committees are subject to a “sunset” review process to determine whether the agency should be retained, modified or abolished.

Reviews are accomplished in three steps. First, an agency under review must produce a report providing specific information, as enumerated in s. 11.906, F.S., related to:

- Agency performance measures;
- The agency complaint process;
- Public participation in making agency rules and decisions;
- Compliance with state purchasing goals and programs for specified businesses;
- Compliance with statutory objectives for each program and activity;
- Program overlap or duplication with other agencies;
- Less restrictive or alternative methods of service delivery;
- Agency actions to correct deficiencies and implement recommendations of legislative and federal audit entities;
- Potential conflicts of interest of its employees;<sup>1</sup>
- Compliance with public records and public meetings requirements;
- Alternative program delivery options, such as privatization, outsourcing, or insourcing;
- Agency recommendations to improve program operations, reduce costs, or reduce duplication;
- The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished;
- Agency advisory committees;
- Agency programs or functions that are performed without specific statutory authority; and
- Other information requested by the Legislature.

Upon receipt of the agency information, the Joint Legislative Sunset Committee and the House and Senate committees assigned to act as sunset review committees<sup>2</sup> must review the information submitted and may request studies by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Based on the agency submissions, the OPPAGA studies and public input, the Joint Legislative Sunset Committee and the legislative sunset review committees will:

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<sup>1</sup> This provision was deleted by s. 1 of ch. 2007-161, L.O.F., and replaced with a requirement that the agency identify “the process by which an agency actively measures quality and efficiency of services it provides to the public.”

<sup>2</sup> Senate Committees include: Agriculture, Commerce, Environmental Preservation and Conservation, and Transportation, together with their respective Appropriations Committee.

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- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees; and
- Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

In addition, the House and Senate sunset review committees must propose legislation necessary to carry out the committees' recommendations.

An agency subject to review is scheduled to be abolished on June 30 following the date of review as specified in s. 11.905, F.S., provided the Legislature finds that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made to transfer certain duties and obligations to a successor agency. If an agency is not abolished, continued, or reorganized, the agency shall continue to be subject to annual sunset review by the Legislature.

The Senate Commerce Committee is the primary sunset review committee for reviews of the divisions of Consumer Services, Licensing, and Standards within the Department of Agriculture and Consumer Services. The Senate General Government Appropriations Committee is assisting in this review.



## **Evaluation Method**

Based upon statutory directives and a review of previous sunset reports, staff of the Senate has developed the following guidelines to be used in reviewing the agencies, their programs, and their advisory committees. Guidelines for agency and program review include:

- What is the mission of the agency?
- Why is the agency performing this mission?
- How are the programs of the agency funded?
- What would be the impact to public health, safety and welfare should the programs be eliminated or modified?
- What duplication of programs exists within the agency or by other agencies or governments?
- Can these agency programs be provided more efficiently?
- Are there management tools in place to appropriately measure program performance?

Guidelines for review of Agency Advisory Councils and Committees include:

- Was the agency advisory committee created to resolve a problem or provide a service? If so, has the problem been solved or the service provided?
- Would there be an adverse effect on the agency or the public if the advisory body were abolished?
- Is the advisory body representative of the public and stakeholders impacted by its actions?

In order to properly evaluate the questions detailed above and support the findings and recommendations, staff would evaluate numerous sources including:

- Agency submissions to the Legislature, as specified in s. 11.906, F.S.;
- OPPAGA reviews;
- Independent reviews;
- Public hearings;
- Joint Committee reports;
- Appropriations data; and
- Other sources as deemed relevant.

# **Program Reviews**

## **Overview**

### **Agency Mission**

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;
- 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.<sup>3</sup>

The department's mission also includes "protecting consumers from unfair and deceptive business practices and providing consumer information." This responsibility is carried out through three divisions. The Division of Licensing is responsible for providing licenses for concealed weapons, private investigators, recovery agents, and security agents. The Division of Standards is responsible for protecting consumers from unfair and unsafe business practices across a wide range of products, including gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides, and weighing and measuring devices. The Division of Consumer Services is the states' clearinghouse for consumer complaints and regulation of various industries.

It is through these three divisions that the department regulates the professional and commercial activities, and individual non-commercial privileges, assigned to them by the Legislature.<sup>4</sup>

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<sup>3</sup> <http://www.doacs.state.fl.us/about/mission.html>

<sup>4</sup> It is generally recognized that commercial regulation of an activity or profession can be accomplished at two general levels: registration and certification/licensing.

Registration is the lower level of regulation, requiring that before an individual be authorized to engage in commercial activity, the individual or business submit verification of specified business information, such as legal organization, proof of insurance and local business tax, and a registration fee. Registration could also require verification of professional certification by a private organization, separate from the regulating entity.

Certification or licensing requires practitioners meet certain minimum qualifications – established by the regulating entity – before they are authorized to perform certain types of commercial activities or operate certain types of businesses. Certification or licensing typically requires the individual meet educational and experience requirements, and pass a competency test administered or recognized by the regulating entity. Typically, a peer board sets the regulatory standards and disciplines certificate holders or licensees.

For concealed weapons licenses, licensing represents a permit – official or legal permission to exercise a non-commercial, individual, private privilege.

## Agency Funding

As shown in **TABLE 1**, these three divisions are funded primarily with trust fund revenues (90 percent). The Division of Licensing is totally funded by fees paid by licensees. Of the four programs in the Division of Standards, only Weights and Measures receive General Revenue to support its operations (\$2.1 million, or 17.5 percent of the division's budget). While the program does impose some fees<sup>5</sup> and receives money from administrative fines, such funds constitute a relatively small amount of program funding compared to the General Revenue provided by the Legislature (3.1 percent). The department reports that the Division of Consumer Services relies on General Revenue (7 percent of total division funds) to support its operations related to processing consumer complaints related to non-regulated activities and businesses registered as Intrastate Movers.

**TABLE 1  
Division Funding: FYs 2003 to 2007**

<b>DIV</b>	<b>FY 2003/4</b>	<b>FY 2004/5</b>	<b>FY 2005/6</b>	<b>FY 2006/7</b>	<b>FY 2007/8</b>	<b>% Change</b>
<b>Licensing</b>						
Trust	11,380,915	11,502,211	12,202,090	12,644,582	12,940,873	12.05
GR	-	-	-	-	-	-
Total	11,380,915	11,502,211	12,202,090	12,644,582	12,940,873	12.05
FTEs	139	139	139	139	139	
<b>Consumer Services</b>						
Trust	5,524,329	5,830,833	6,019,066	6,257,879	7,016,160	21.26
GR	504,844	625,522	750,523	803,992	531,506	5.02
Total	6,029,176	6,456,355	6,769,589	7,061,871	7,547,666	20.12
FTEs	117	123	125	126	130	
<b>Standards</b>						
Trust	8,497,125	8,787,160	9,251,428	10,250,133	9,892,447	14.10
GR*	2,095,857	2,043,045	2,072,771	2,342,564	2,093,556	- 0.11
Total	10,592,982	10,830,205	11,324,199	12,592,697	11,986,003	11.62
FTEs	189	188	188	188	186	

Source: Senate General Government Appropriations Committee staff, 11/07.

\*General Revenue is provided only for Bureau of Weights and Measures.

The cumulative rate of inflation from FY 2004/5 to FY 2007/8 (actual for past years & estimated for current year) is 12.4%. (Source: Office of Economic and Demographic Research, The Florida Legislature, 22 October, 2007.)

The cumulative growth rate for the State Budget is 34.3%. (Source: Senate General Government Appropriations Committee staff.)

As shown in **TABLE 1**, the increase in appropriations from FY 2003/04 to FY 2007/08 for the Divisions of Licensing, and Standards (12.1 percent and 11.6 percent, respectively) was slightly lower than the rate of inflation (12.4 percent) and is much lower than the growth rate in the total state budget for the same period (34.3 percent). Funding for the Bureau of Weights and Measures, which is funded primarily by General Revenue, declined by 0.1 percent. The growth in the Division of Consumer Services was 20.12 percent (5.02 percent in General Revenue).

<sup>5</sup> Section 531.415, F.S., authorizes the department to impose fees for metrology laboratory calibration and testing services.

Over this same period, there was no growth in Full-Time Equivalent positions for the Division of Licensing, a decrease of three positions for the Division of Standards, and an increase of 13 positions for the Division of Consumer Services.

## **Efficiency Initiatives**

The department has attempted to minimize the growth in program costs, increase efficiency, and increase the quality of services to both consumers and businesses, by implementing the following initiatives:<sup>6</sup>

- LP Gas license renewal applications may now be submitted on-line;
- Motor Vehicle Repair Shop Registrations and Game Promotion packages may now be submitted on-line;
- A One-Stop department internet site was developed to provide a variety of information for both consumers and businesses;<sup>7</sup> and
- The Administrative Image Management System (AIMS) was implemented to provide employees with an electronic “workflow” for administrative services.

While it has considered a number of options, the department has not outsourced services specifically for the divisions of Licensing, Standards, and Consumer Services.

## **Management Tools**

The department reports it uses a number of management tools to measure program performance. It uses the performance measures and standards developed through the department’s Long Range Program Plan (LRPP), an annually updated five-year plan describing the functions agencies perform and how those functions will be used to achieve designated outcome.<sup>8</sup>

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<sup>6</sup> Information submitted by The Department of Agriculture and Consumer Services, in response to a request by the Joint Legislative Sunset Committee, August 10, 2007.

<sup>7</sup> <http://www.doacs.state.fl.us>

<sup>8</sup> Section 216.013, F.S., requires state agencies to develop long-range program plans (LRPP) to achieve state goals. These plans are policy based, priority driven, and developed through examination and justification of all agency programs. Included in the long range program plan is information regarding the department’s comprehensive performance accountability system and, at a minimum, a list of performance measures and standards. The agency uses these measures and standards for internal management purposes. The performance information includes output measures showing the number of goods and services each program produces. Also included are output measures showing the effect of these goods and services in achieving desired results. The information contains how data is collected, the methodology used to measure a performance indicator, the validity and reliability of a measure, and the appropriateness of a measure.

To delete or amend these measures and standards, agencies must obtain approval from the Office of the Governor and the Legislature, as set forth in s. 216.177, F.S.

The LRPP is available at [http://www.oppage.state.fl.us/monitor/reports/pdf/2006-07\\_Measures.pdf](http://www.oppage.state.fl.us/monitor/reports/pdf/2006-07_Measures.pdf)

In its recent review of the divisions of Standards, and Consumer Services, the Office of Program Policy Analysis and Government Accountability (OPPAGA) found that these programs achieved the established standards of 11 of 14 performance measures in FY 2006/07.<sup>9</sup>

The department reports it measures customer satisfaction through the customer feedback received through the department's internet home page, its toll-free telephone numbers, and correspondence through the mail service. The department also reports that it uses formal and informal interviews, focus groups, customer service workshops, management reports and feedback from department advisory councils to measure customer satisfaction.<sup>10</sup>

The department reports that it currently has 92 Administrative Policies and Procedures, which are regularly updated, to provide standards by which employee performance is measured.<sup>11</sup>

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<sup>9</sup> The Office of Program Policy Analysis and Government Accountability, Sunset Memorandum: Department of Agriculture and Consumer Services, Consumer Protection Program – Options for Legislative Consideration, January 8, 2008. Appendix A.

<sup>10</sup> Information provided by the department to the Joint Legislative Sunset Advisory Committee, October 2007.

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

## **Division of Licensing**

The Division of Licensing has two primary responsibilities: regulation of private security, private investigative and recovery services; and issuance of licenses to carry concealed weapons or concealed firearms.

### **Private Security, Private Investigative and Recovery Services**

The Division of Licensing is responsible for the regulation of licensing of private security, private investigative and recovery services.<sup>12</sup> A security officer is defined as:

any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.<sup>13</sup>

A “private investigator” is defined as “any individual who, for consideration, advertises as providing or performs private investigation.”<sup>14</sup> Private investigation is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefore.<sup>15</sup>

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<sup>12</sup> Regulating private investigative, private security, and recovery industries was assigned to the Department of State in 1965. In 2002, the Division of Licensing of the Department of State was transferred to the Department of Agriculture and Consumer Services, including the Concealed Weapons Permit Program. See ss. 1, 3-10, ch. 2002-295, L.O.F.

<sup>13</sup> Section 493.6101(19), F.S.

<sup>14</sup> Section 493.6101(16), F.S.

<sup>15</sup> Section 493.6101(17), F.S.

A “recovery agent” is defined as “any individual who, for consideration, advertises as providing or performs repossessions.”<sup>16</sup> “Recovery agency” is defined as “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.”<sup>17</sup> “Repossession” means recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, industrial equipment, and motor homes

by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.<sup>18</sup>

Certain individuals are exempt from the recovery licensing requirements for private security, private investigative and recovery services. These include local, state, and federal law enforcement officers, licensed insurance investigators and individuals solely, exclusively, and regularly employed as unarmed investigators or recovery agents “in connection with the business of his or her employer, when there exists an employer-employee relationship.”<sup>19</sup>

Florida law establishes criteria for granting licenses for security, private investigative, and repossession services. Individuals seeking a license must clear a criminal background check as well as meet specific training and experience requirements, which vary by the type of license. In addition, the applicant must:

- Be at least 18 years of age;
- Be of good moral character;
- Not be adjudicated incapacitated;
- Not be a chronic and habitual user of alcoholic beverages to the extent normal faculties are impaired;
- Not have been committed for controlled substances or found guilty of a crime under ch. 893, F.S.; and
- Be a citizen or legal resident alien of the U.S.<sup>20</sup>

## **Concealed Weapons or Firearms**

The Division of Licensing also issues licenses to carry concealed weapons or concealed firearms to qualified persons.<sup>21</sup> A concealed weapon is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.<sup>22</sup> An applicant for such license must submit to the department a completed

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<sup>16</sup> Section 493.6101(21), F.S.

<sup>17</sup> Section 493.6101(20), F.S.

<sup>18</sup> Section 493.6101(22), F.S.

<sup>19</sup> Section 493.6102(1)-(3), F.S.

<sup>20</sup> Section 493.6106(1), F.S.

<sup>21</sup> Section 790.06(1), F.S. Prior to 1987, concealed weapons licenses were issued at the local level with each county having jurisdiction over the terms and cost of licensure. (See OPPAGA, Report No. 00-22.) Regulation of the concealed weapons licensure was assigned to the Department of State in 1987. In 2002, the program was transferred to the Department of Agriculture and Consumer Services. (See ss. 1, 3-10, ch. 2002-295, L.O.F.)

<sup>22</sup> Section 790.06(3)(a), F.S.

application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph of the applicant.<sup>23</sup> The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with licensure requirements;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.<sup>24</sup>

When an application is received, the department has 90 days to either grant or deny the license.<sup>25</sup> If the department receives criminal history information with no final disposition on a crime which may disqualify the applicant, the time limitation may be suspended until receipt of the final disposition or proof of restoration of civil and firearm rights.<sup>26</sup>

A "default" license is a license that is issued on the 90<sup>th</sup> day after the application is received. For FY 2006/07, the department received 73,179 new applications and 24,923 renewal applications. Of those, the department issued 66,078 new licenses and 24,753 renewal licenses.<sup>27</sup>

From FY 2003/4 through FY 2006/07, the department issued 4,439 default licenses to applicants without prior criminal histories and 314 default licenses to applicants with prior criminal histories.<sup>28</sup> Of those, 24 default licenses were revoked for criminal histories which would disqualify the applicant for the license.<sup>29</sup>

## **Findings**

### ***Funding***

As shown in **TABLE 1**, the Division of Licensing is funded entirely by fees imposed on licensees.

### ***Necessity***

In 1990, the Legislature identified the need to regulate private security, investigative, and recovery industries, finding that these professions "require regulation to ensure that the interests of the public will be adequately served and protected."<sup>30</sup> Furthermore,

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<sup>23</sup> Section 790.06(5), F.S.

<sup>24</sup> Section 790.06(4), F.S.

<sup>25</sup> Section 790.06(6)(c), F.S.

<sup>26</sup> Section 790.06(6)(c)3., F.S.

<sup>27</sup> "Concealed Weapon/Firearm Summary Report," viewed October 31, 2007, [http://licgweb.doacs.state.fl.us/stats/07012006\\_06302007\\_cw\\_annual.pdf](http://licgweb.doacs.state.fl.us/stats/07012006_06302007_cw_annual.pdf).

<sup>28</sup> "Prior criminal history" means a criminal history result that includes a Record of arrest and Prosecution (RAP) sheet or having at least one arrest. Not all criminal histories disqualify a applicant for a concealed weapons permit.

<sup>29</sup> Information submitted by The Department of Agriculture and Consumer Services, in response to a request by the Senate Commerce Committee, November 16, 2007.



...untrained persons, unlicensed persons or businesses, or persons who are not of good moral character engaged in the private security, investigative, and recovery industries are a threat to the welfare of the public if placed in positions of trust. Regulation of licensed and unlicensed persons and businesses engaged in these fields is therefore deemed necessary.<sup>31</sup>

As for concealed weapons permits, the Legislature found in 1987 that

...as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed weapons and firearms for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed weapons or firearms for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this section is subjectively or arbitrarily denied his or her rights.<sup>32</sup>

In 2000, OPPAGA published a Justification Review of the Division of Licensing (then in the Department of State), finding that:

Although not an essential state government function, the Licensing Program provides a public benefit by carrying out the legislative intent to protect the interests of Florida's citizens through licensing of professions and individuals carrying concealed weapons.<sup>33</sup>

**TABLE 2** shows the type and number of licensees, and number of complaints against these licensees received by the department.

### ***Duplication***

There is no duplication of programs within the agency or by other agencies or governments in the regulation of private security, private investigative and recovery services, and of providing licenses for concealed weapons. These services are the sole responsibility of the division.

**TABLE 2**  
**Number of Licensees and Complaints**  
**FY 2006-2007**

Type of License	Number of Licensees	Number of Complaints
Concealed Weapons/Firearms	438,864	N/A
Private Investigation	12,663	112
Recovery	1,366	47
Security	129,279	648

Source: The Department of Agriculture and Consumer Services, August 8, 2007.

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<sup>30</sup> Section 2, ch. 90-364, L.O.F., now in s. 493.6100, F.S.

<sup>31</sup> *Id.*

<sup>32</sup> Section 1, ch. 87-24, L.O.F., now in s. 790.06(15), F.S.

<sup>33</sup> OPPAGA Justification Review: Licensing Program is Performing Well; Operations and Service Can be Improved, Report No. 00-22.

### ***Efficiency***

A recent Auditor General operational audit focused on the department's administration of the state's concealed weapons and firearms licensing program.<sup>34</sup> The audit's findings include:<sup>35</sup>

Finding No. 1: For fiscal years 2005/06 and 2006/07, the Department's legislatively-approved performance measures and standards required that 90 percent of license revocations or suspensions be initiated within 20 days after receipt of disqualifying information. Audit tests disclosed that Department staff did not accurately record the date upon which reports of disqualifying events or conditions were received.

Finding No. 2: Upon receipt of information concerning disqualifying events or conditions, the Department did not always timely initiate administrative actions to suspend, revoke, or deny licenses. Additionally, we noted that the Department did not always timely initiate application suspensions.

Finding No. 3: The Department sometimes sent unnecessary correspondence to concealed weapon and firearm licensees and error or omission letters which did not properly reflect actual deficiencies in the applications received.

Finding No. 4: The Department, in consultation with FDLE, should consider developing a methodology that would allow the efficient use of outstanding warrant information to identify licensees and applicants who are awaiting disposition of formal charges relating to a disqualifying crime. To fully evaluate the cost effectiveness of the use of warrant information, the department should initially approach using the information through a pilot project.

The department responded to the audit by stating that:

concealed weapons licensing activities have significantly increased while staff resources have remained constant in the Division of Licensing. Increased licensing activity with a constant level of human resources may have resulted in the accuracy and timeliness issues identified in the audit.<sup>36</sup>

For the period under review, the audit reported a 44.6 percent increase in licenses issued, while staffing levels remained constant.<sup>37</sup> This increase is consistent with the 31 percent average growth in licenses over the past 6 years.<sup>38</sup> Although there has been a corresponding increase in fee revenue, the department has not had the authority to spend these trust fund revenues to meet the increase in demand placed on program staff.<sup>39</sup>

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<sup>34</sup> Auditor General Report No. 2008-054: Department of Agriculture and Consumer Services Concealed Weapons Licensing and Prior Audit Follow-Up.

<sup>35</sup> *Id.* at 1.

<sup>36</sup> *Id.* at 7.

<sup>37</sup> *Id.* at 2.

<sup>38</sup> Information provided by department staff, December 18, 2007.

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

The department reports that it has addressed the deficiencies identified in the audit with process enhancements and staff training. The department is also shifting division resources to ensure the statutorily required deadlines for suspensions and revocations. However, they note that this action has “had an adverse impact on concealed weapons licensing and other Division regulatory programs.”<sup>40</sup>

## **Recommendations**

To meet the staffing needs of the concealed weapons licensing program, the Legislature should provide the department with the authority to spend the proceeds from the concealed weapons license fees. These trust fund revenues include collections from previous years and additional revenue the department anticipates it will receive from license fees.

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<sup>40</sup> Auditor General Report No. 2008-054: Department of Agriculture and Consumer Services Concealed Weapons Licensing and Prior Audit Follow-Up, p. 7.

## **Division of Standards**

The Division of Standards has diverse regulatory responsibilities, which are divided into the following four bureaus:

- Fair Rides Inspection, which provides permits for, and safety inspections of, amusement rides at temporary events and permanent parks;
- Liquid Petroleum (LP) Gas Inspection, which provides safety inspections of LP Gas distribution and storage facilities in Florida and licensed businesses and personnel engaged in LP gas activities;
- Petroleum Inspection, which provides regulatory oversight for quantity and pricing of petroleum fuels; and
- Weights and Measures, which provides regulatory oversight for transactions involving weighing and measuring devices.

The Division of Standards is also responsible for:

- Enforcing the Motor Fuel Marketing Practices Act, which prohibits discriminatory, predatory and unfair trade practices which adversely affect competition in the marketing of motor fuel.<sup>41</sup>
- Enforcing the “Price Gouging” statute, which prohibits increasing prices for essential services during a declared state of emergency, unless the increases are attributable to added costs incurred by the seller of that commodity.<sup>42</sup>
- Implementing the Farm to Fuel Grants Program, a grant program for Florida bioenergy development.<sup>43</sup>

### **Division of Standards: Fair Rides Inspection**

The Division of Standards inspects amusement devices and attractions at public fairs, expositions, and permanent facilities for their structural and operational integrity.<sup>44</sup> In Florida, amusement rides, except those at exempt permanent facilities, are permitted and inspected annually by the department.<sup>45</sup> Temporary amusement rides are inspected each time the ride is set up or moved to a new location and permanent rides are inspected semi-annually.<sup>46</sup> The department is required to adopt specific national standards for amusement rides.<sup>47</sup>

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<sup>41</sup> Sections 526.301-.313, F.S., which was created by s. 1, ch. 85-74, L.O.F.

<sup>42</sup> Section 501.160, F.S., which was created by s. 1, ch. 92-353, L.O.F.

<sup>43</sup> Section 570.957, F.S., which was created by s. 47, ch. 07-73, L.O.F.

<sup>44</sup> Section 616.242, F.S.

<sup>45</sup> Section 616.242(5), F.S.

<sup>46</sup> Section 616.242(7)(a), F.S. OPPAGA Report 94-42 recommended DACS consider using a risk-based system for scheduling inspections, rather than inspecting all rides at every set up, thus reducing cost related to the inspections. The department responded that such a strategy may diminish the protection provided to the public under current processes.

<sup>47</sup> Section 616.242(4), F.S.

Florida law also requires an insurance policy or surety bond in the amount of \$1 million per occurrence and \$1 million in the aggregate be submitted to the department to satisfy the required annual insurance on fair rides.<sup>48</sup> The insurance or bond must be procured from an insurer or surety that is licensed to transact business in Florida or that is approved as a surplus lines insurer.<sup>49</sup>

## **Division of Standards: Liquefied Petroleum Gas Inspection**

The Division of Standards licenses, inspects and conducts investigations for the storage, transportation, distribution and use of liquid petroleum (LP, propane and butane) gas. The following positions in the LP gas industry are required to obtain a license from the department:

- pipeline system operator;
- category I liquefied petroleum gas dealer;
- category II liquefied petroleum gas dispenser;
- category III liquefied petroleum gas cylinder exchange operator;
- category IV liquefied petroleum gas dispenser and recreational vehicle servicer;
- category V liquefied petroleum gas dealer for industrial uses only;
- LP gas installer;
- specialty installer;
- dealer in liquefied petroleum gas appliances and equipment;
- manufacturer of liquefied petroleum gas appliances and equipment;
- equalizer of cylinders, or fabricator, repairer; and
- tester of vehicles and cargo tanks.<sup>50</sup>

To obtain a license, applicants must pass a written examination administered by the department and pay a fee.<sup>51</sup> All licensees must renew their licenses annually.<sup>52</sup>

The Division of Standards also prepares news releases on gas grill safety, home heating safety and reporting of residential LP gas system changes to gas suppliers. In addition, the division maintains a website with information on product recalls, industry informational and safety bulletins, laws and regulations, licensing requirements and training opportunities.<sup>53</sup>

## **Division of Standards: Petroleum Inspection**

The Division of Standards tests the quality of petroleum, brake fluid and antifreeze products sold in Florida. Before selling or offering for sale any petroleum fuel, an affidavit must be filed with the department that indicates the desire to do business in this state, and the name and address of the

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<sup>48</sup> Section 616.242(9), F.S.

<sup>49</sup> Section 616.242(9), F.S. Also, a similar insurance requirement for amusement rides or attractions is found in ch. 546, F.S.

<sup>50</sup> Section 527.02, F.S.

<sup>51</sup> Section 527.0201(1), F.S.

<sup>52</sup> Section 527.03, F.S.

<sup>53</sup> Information provided by department staff, September 24, 2007.

manufacturer of the petroleum fuel and stating that the petroleum fuel is in conformity with the standards prescribed by department rule.<sup>54</sup>

The Division of Standards is also responsible for inspecting all petroleum measuring devices.<sup>55</sup> The inspections include calibrating test, proper installations and maintenance of measuring devices, and labeling of petroleum dispensers.<sup>56</sup>

Both antifreeze and brake fluid sold in Florida are required to register with the department and undergo various testing prior to sale. The department analyzes antifreeze for corrosion, freezing point, boiling point and chemical content as part of the antifreeze registration and regulatory program.<sup>57</sup> Similarly, brake fluid is also inspected, analyzed and tested by the department before being registered by the department for sale to the public.<sup>58</sup>

The Division of Standards also investigates complaints alleging violations of Florida's Motor Fuel Marketing Practices Act.<sup>59</sup> The act prohibits the sale of motor fuel at a retail outlet below refiner cost, when the effect is to injure competition.<sup>60</sup>

### **Division of Standards: Weights and Measures**

The Division of Standards inspects the accuracy of commercial weighting and measuring devices, which include retail scales, pharmacy balances, industrial and livestock scales, vehicle scales and taximeters. The department also inspects the accuracy of retail price scanners and the accuracy of labels and net contents of pack food items, packaged goods (such as dry goods, household items, building and construction materials), gardening products, and numerous other consumer products.<sup>61</sup>

The Division of Standards maintains the state's primary standards of mass, length and volume.<sup>62</sup> The Division of Standards also provides calibration services to the commercial measurement industry, scientific and law enforcement labs, manufacturers, and the aerospace and technology industries.<sup>63</sup>

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<sup>54</sup> Section 525.01, F.S.

<sup>55</sup> Section 525.07, F.S.

<sup>56</sup> Chapter 5F-11, F.A.C.

<sup>57</sup> Section 501.913, F.S.

<sup>58</sup> Section 526.53, F.S.

<sup>59</sup> Section 526.10, F.S., requires that, upon request of the department, the Department of Legal Affairs and each state attorney assist in the enforcement of the provisions of ch. 526, F.S.

<sup>60</sup> Section 526.304(1)(a), F.S.

<sup>61</sup> Section 531.41, F.S.; <http://www.doacs.state.fl.us/standard/weights/index.html>.

<sup>62</sup> <http://www.doacs.state.fl.us/standard/weights/index.html>.

<sup>63</sup> <http://www.doacs.state.fl.us/standard/weights/index.html>.

## Findings

### *Funding*

Section 216.0236(1), F.S., created by ch. 2006-93, L.O.F., states that:

It is the intent of the Legislature that all costs of providing a regulatory service or regulating a profession or business be borne solely by those who receive the service or who are subject to regulation.

As shown in **TABLE 1**, the Division of Standards is funded entirely by fees imposed on businesses receiving services, with the exception of the Weights and Measures program. General Revenue is appropriated to supplement the costs associated with the implementation of the Weights and Measures program. The program does assess some fees for actual metrology laboratory calibrations and testing services.<sup>64</sup> In addition, excess revenue from the Petroleum Inspection Program subsidizes the Weights and Measures program.<sup>65</sup>

If the department were authorized to charge fees for its weights and measuring device inspections, the general revenue allocation and the trust fund subsidization could be reduced or eliminated. OPPAGA has previously found that, although weights and measures activities are considered a general consumer service,

A reasonable argument can be made that the businesses using these devices should pay regulatory costs. The commercial entities are generating profits from their sales to consumers using weights and measures devices and therefore should pay the cost of regulation.<sup>66</sup>

In fact, there are other states that charge fees to cover the costs of regulating weights and measuring devices.<sup>67</sup>

Currently, the LP Gas Inspection and the Fair Rides Inspection programs are not self-supporting, and are supplemented by fees and excess revenue from the Petroleum Inspection Program.<sup>68</sup> The department reports that this is due to an increase in operational costs.<sup>69</sup>

### *Necessity*

The department reports that the services and inspections provided by the Division of Standards provide a public benefit and promote public safety.<sup>70</sup> The amusement ride safety program helps ensure the safety of

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<sup>64</sup> Section 531.415, F.S.; For Fiscal Year 2006/07, the department collected \$39,636.94.

<sup>65</sup> Department of Agriculture and Consumer Services' Statement of Revenues and Expenditures for Fiscal Year 2006/07.

<sup>66</sup> OPPAGA Justification Review: General Revenue Savings Possible in Consumer Protection Program, November 2001, Report No. 01-51.

<sup>67</sup> *Id.*

<sup>68</sup> The Department of Agriculture and Consumer Services, Statement of Revenues and Expenditures, FY 2006-07.

<sup>69</sup> The Department of Agriculture and Consumer Services, Legislative Budget Request, FY 2008-09.

<sup>70</sup> The Department of Agriculture and Consumer Services, *Agency Report to the Sunset Advisory Committee*, December 20, 2006.

amusement rides at Florida's amusement parks, fairs and carnivals. The liquefied petroleum gas storage and distribution program helps ensure the safe transportation, handling and use of propane. The petroleum fuels inspection program helps ensure that consumers receive the correct quantity of a product as well as the quality of products used in automobiles. Further, the Weights and Measures inspection program helps ensure that weighing and measuring devices in Florida are accurate, thereby making certain that consumers are receiving the full value for the products they purchase.

In 2001, OPPAGA, in its justification review of the division, reported that:

...the program's inspections of amusement devices, petroleum products, and weights and measures devices are beneficial because most consumers lack the expertise and equipment needed to test these products and devices.<sup>71</sup>

Further, OPPAGA found that the Division of Standards' inspections "help provide reasonable assurance that products sold by weight and volume are accurately measured and will perform as advertised."<sup>72</sup>

In 2001, MGT, a private consulting firm, found that the division "provides services that assure consumer protection and safety for Florida citizens."<sup>73</sup> MGT recommended that the division continue providing services and no program should be discontinued.<sup>74</sup>

**TABLE 3** shows the number of inspections performed by the department along with the number of violations for each type of licensee.

**TABLE 3**  
**Division of Standards: Licenses, Inspections & Violations**  
**FY 2006-2007**

Type of Licensee	Number of Inspections	Inspections with Violations	Number of Violations
Petroleum Field Inspection	269,966	Not Determinable	49,783
Petroleum Product Lab Analysis	113,220	326	326
Fair Rides	10,054	5,674	17,616
LP Gas Facilities	9,673	6,674	15,266
Weighing and Measuring Devices	62,973	7,094	7,094
Weights & Measures Package Testing	2,443	265	265
Business Scanners Price Verification	217	33	33

Source: The Department of Agriculture and Consumer Services, August 8, 2007.

<sup>71</sup> OPPAGA Justification Review: General Revenue Savings Possible in Consumer Protection Program, November 2001, Report No. 01-51.

<sup>72</sup> *Id.*

<sup>73</sup> MGT of America, Department of Agriculture, Zero-Based Budgeting Preliminary Review, 2001. A final report was not submitted to the Legislature.

<sup>74</sup> *Id.*



***Duplication***

There is no duplication of programs within the agency or by other agencies or governments – the regulation of fair rides, LP gas, petroleum, and weights and measures, is the sole responsibility of the division.

**Recommendations**

To address funding issues, the Legislature should:

- Require the department to assess service charges to businesses that receive service through the Bureau of Weights and Measures;
- Increase application and renewal fees for the liquefied petroleum business licenses, sufficient to fund the department's cost of providing services; and
- Increase the fair rides inspection fees, sufficient to fund the department's cost of providing services.

## **Division of Consumer Services**

The Division of Consumer Services is responsible for providing a clearinghouse for consumer assistance, information and complaints. The division is also responsible for regulating ten business sectors and, with the Department of Legal Affairs, implementing a portion of the Lemon Law program.

### **Division of Consumer Services: Consumer Assistance, Mediation & Enforcement**

The Division of Consumer Services is directed to serve as a clearinghouse for matters relating to consumer protection, consumer information, and consumer services in general.<sup>75</sup> Clearinghouse responsibilities include staffing a consumer call center to respond to inquiries and complaints, maintaining a web-based resource guide, and tracking trends and conditions related to consumer issues. The division also assists, develops and conducts consumer education and information programs.

The call center handles four types of consumer complaints:

- Complaints related to businesses or professions regulated by other state agencies;
- Complaints related to businesses that are not regulated by the state;
- Complaints related to businesses that are not required to be registered with the department, but are “regulated” by the statutes and require the department to respond to violations of prohibited business practices; and
- Complaints related to businesses that are required to be registered with the department.

Complaints related to businesses or professions under the jurisdiction of another state agency are transmitted to the appropriate agency.<sup>76</sup> Conversely, a state agency may refer or transmit a consumer complaint to the call center for re-referral to the appropriate agency. When the subject of a complaint is

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<sup>75</sup> Section 570.544(3), F.S. In 1967 the Legislature created the Office of Consumer Services with the Department of Agriculture (67-342, L.O.F.) and renamed the department in 1969.

In 2003, the Legislature eliminated, for that fiscal year, virtually all portions of DACS’ clearinghouse responsibilities – including the provision directing DACS to receive complaints from consumers related to any subject area and refer them to the appropriate agency, and the provision directing the division to mediate complaints in areas unregulated by the state. (See Section 60, ch. 2003-399, L.O.F., the implementing bill for the 2003-2004 General Appropriations Act. The bill retained language in s. 570.544, F.S., however, directing state agencies to submit to DACS complaints they receive from consumers which are not within the agency’s jurisdiction and directing DACS to refer those complaints to the proper agency.) The changes accompanied a reduction of seven positions in the General Appropriations Act. In fiscal year 2004-2005, the statutory authority for the complaint clearinghouse was restored, as were four of the original seven positions. (See Senate Interim Project Report 2005-113, November, 2004, by the Commerce and Consumer Services Committee.)

<sup>76</sup> An agency to which the Division of Consumer Services refers a complaint must, within 30 days, acknowledge its receipt and report on its disposition or status. (See s. 570.544(6), F.S.) As provided for in s. 570.544(7), F.S., the records of the Division of Consumer Services are public records with the exception of customer lists, customer names, and trade secrets.

not within the regulatory authority of any state agency, the division is directed to pursue informal methods of mediating a settlement of the complaint between the consumer and business.<sup>77</sup>

The statutes require the department to take action against the following businesses – which are not required to be registered with the department or be licensed by another state agency – when they violate statutory provisions related to their business practices:

- Anti-Tampering – The department has the authority to “initiate actions” that are necessary to safeguard the public by removing unsafe food from consumer channels.<sup>78</sup>
- Commercial Weight Loss – The department has the authority to bring a civil action for injunctive relief and other civil penalties for injured consumers from a commercial weight loss product.<sup>79</sup>
- Consumer Pricing – The department has the authority to administer the Consumer Unit Pricing Act which provides the methods for unit pricing for commodities.<sup>80</sup>
- Retail Sales Establishments – The department is required to enforce the refund policy posting and production requirement.<sup>81</sup>
- Bedding Labels – The department has the authority to enforce the Bedding Label Act which requires that all bedding manufactured in Florida that contains previously used materials to bear a label stating such.<sup>82</sup>
- Price Gouging – During a declared state of emergency, prices for essential commodities may not be increased, unless the increases are attributable to added costs incurred by the seller of that commodity.<sup>83</sup> The department, Office of the State Attorney, and the Department of Legal Affairs may enforce this section.<sup>84</sup> The department handles price gouging activities through its’ divisions of Consumer Services and Standards.<sup>85</sup> Additionally, the Office of Agricultural Law Enforcement and the Office of General Counsel assist when necessary.<sup>86</sup>
- Gift certificates and credit memos – The department has the authority to enforce the restrictions on gift cards and credit memos.<sup>87</sup>
- Cable or Video Service Providers – Beginning July 1, 2009, the department will be the sole authority to receive service quality complaints from cable or video service customers.<sup>88</sup>

The department, with the Department of Legal Affairs, implements the Florida New Vehicle Warranty Enforcement Act (Lemon Law).<sup>89</sup> The program allows new car owners who have been unable to get their

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<sup>77</sup> Section 570.544(3), F.S.

<sup>78</sup> Section 501.001(3)(a), F.S.

<sup>79</sup> Section 501.0581, F.S.

<sup>80</sup> Section 501.135, F.S.

<sup>81</sup> Section 501.142, F.S.

<sup>82</sup> Section 501.145, F.S.

<sup>83</sup> Section 501.160, F.S.

<sup>84</sup> Section 501.160(8), F.S.

<sup>85</sup> Information submitted by The Department of Agriculture and Consumer Services, in response to a request by the Senate Commerce Committee, November 16, 2007.

<sup>86</sup> *Id.*

<sup>87</sup> Section 501.95, F.S.

<sup>88</sup> Section 610.108, F.S.

<sup>89</sup> Section 681.10, F.S.

vehicle problems resolved by the manufacturer to attempt to have their car declared a “lemon” and be eligible for relief. The department receives the initial complaint and screens the complaint for arbitration eligibility.<sup>90</sup> Eligible complaints are then forwarded to the Lemon Law Arbitration Program.<sup>91</sup> The arbitration board conducts a hearing to determine if the vehicle is a “lemon.”<sup>92</sup> If the vehicle is declared a “lemon,” the vehicle owner is granted relief.<sup>93</sup>

The department, in coordination with the Department of Legal Affairs and any state attorney, is also granted general authority to investigate and bring an action against any business determined to be in violation of ch. 501, F.S., which relates to consumer protection.<sup>94</sup> In addition,

If the department, by its own inquiry or as a result of complaints, has reason to believe that a violation of the laws of the state relating to consumer protection has occurred or is occurring, that the interests of the consumers of this state have been damaged or are being damaged, or that the public health, safety, or welfare is endangered or is likely to be endangered by any consumer product or service, to commence legal proceedings in circuit court to enjoin the act or practice or the sale of the product or service and may seek appropriate relief on behalf of consumers.<sup>95</sup>

The department also has limited responsibility relating to consumer product recalls. Currently, the department contracts with the Consumer Product Safety Commission (CPSC) for the department to perform requested recall effectiveness checks and investigations.<sup>96</sup> Specifically, the department verifies whether the business received the recall notice, whether the business properly posted the notice, and that the recalled items have been removed from the business’ shelf.<sup>97</sup> For this service, the department receives approximately \$3,000 a year from the CPSC.<sup>98</sup>

## **Division of Consumer Services: Compliance**

In addition to serving as the state’s complaint clearinghouse, the department has statutorily assigned regulatory oversight of ten business sectors and is responsible for investigating violations of Florida’s “no sales solicitation calls” law. This oversight requires that individuals or businesses submit verification of specified business information and a registration fee. Registration may also require verification of professional certification by a private organization. In addition to responding to consumer complaints

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<sup>90</sup> Section 681.109(5), F.S.

<sup>91</sup> *Id.*

<sup>92</sup> Section 681.1095, F.S.

<sup>93</sup> Section 681.1095, F.S.

<sup>94</sup> Section 570.07(36), F.S.

<sup>95</sup> Section 570.07(37), F.S.; This section grants the department the authority to file a civil action on unregulated complaints received by the department. However, the department stated that some courts that have ruled or commented that the purpose of this statute is for violations where there are multiple complaints and not designed to cover individual consumer complaints on a particular business.

<sup>96</sup> The Department of Agriculture and Consumer Services, *Agency Report to the Sunset Advisory Committee*, December 20, 2006.

<sup>97</sup> Information submitted by The Department of Agriculture and Consumer Services, December 11, 2007.

<sup>98</sup> The Department of Agriculture and Consumer Services, *Agency Report to the Sunset Advisory Committee*, December 20, 2006.

regarding these ten business sectors, the department conducts periodic “sweeps” to ensure compliance with the requirements of their respective statutes.

### ***Business Opportunities***

To sell or advertise the sale of business opportunities in Florida, sellers must annually register with the department.<sup>99</sup> “Business opportunity” means the sale or lease of any products, equipment, supplies, or services which are sold or leased to a purchaser to enable the purchaser to start a business for which the purchaser is required to pay over \$500 and the seller represents certain guarantees, as specified in statute.<sup>100</sup>

Sellers must annually pay a \$100 registration fee and file with the department a copy of the disclosure statement, a list of the seller’s officers, directors, trustees, general partners, general managers, principal executives, etc.,<sup>101</sup> and if required, proof of a bond, certificate of deposit, or guaranteed letter of credit in an amount not less than \$50,000.<sup>102</sup>

After the registration requirements are met, the division issues an advertisement identification number to the seller of the business opportunity. This number must be included in all written advertisements, sales materials, promotional documents, and business opportunity contracts. The statutes list a number of prohibitions on the sellers, and authorizes the division to impose penalties for non-compliance.<sup>103</sup> In addition, the statutes require that 3 days before signing a contract, the seller of a business opportunity is required to provide the purchaser a disclosure on the business and services the seller of the business opportunity will provide.<sup>104</sup>

### ***Motor Vehicle Repair Shops***

Prior to conducting business as a motor vehicle repair shop,<sup>105</sup> a person must first register with the department.<sup>106</sup> Upon registration, the applicant must submit verification of specified business information.<sup>107</sup>

The department charges a biennial fee<sup>108</sup> based upon the number of employees on a per-year basis as follows:

- If the place of business has 1 to 5 employees: \$50

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<sup>99</sup> Section 559.805, F.S., as created by ch. 79-374, L.O.F.

<sup>100</sup> Section 559.801(1), F.S.

<sup>101</sup> Section 559.805, F.S.

<sup>102</sup> Section 559.807, F.S.

<sup>103</sup> Sections 559.809, 559.811, and 559.813, F.S.

<sup>104</sup> Section 559.803, F.S.

<sup>105</sup> A motor vehicle repair shop is defined as “any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons...” See s. 559.903(6), F.S. Exceptions are specified in s. 559.902, F.S.

<sup>106</sup> Section 559.904(1), F.S.; as created by ch. 80-139, L.O.F.

<sup>107</sup> Section 559.904(1)(a)-(e), F.S.

<sup>108</sup> Of the ten business sectors required to be registered with the department, only Motor Vehicle Dealers register biennially. See s. 9, ch. 2003-132, L.O.F. The other nine must register annually.

- If the place of business has 6 to 10 employees: \$150
- If the place of business has 11 or more employees: \$300<sup>109</sup>

The department may deny, revoke, or refuse to renew the registration of a motor vehicle repair shop if the shop, or any of its directors, officers, owners, or general partners:

- Have failed to meet the requirements for registration;
- Have not satisfied a civil fine, administrative fine, or other penalty arising out of any administrative or enforcement action brought by any governmental agency based upon conduct involving fraud, dishonest dealing, or specified violations;
- Have had against them any civil, criminal, or administrative adjudication in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or specified violations; or
- Have had a judgment entered against them in any action brought by the department or the state attorney.<sup>110</sup>

Furthermore, the department is required to post a prominent “Closed by Order of the Department” sign on any shop that has had its registration suspended or revoked. The department is also required to post a sign on any shop that has been judicially or administratively determined to be operating without a registration.<sup>111</sup>

The statutes set forth numerous requirements relating to written estimates for diagnostic work and repair, invoices for work done, and disclosures.<sup>112</sup> Shops must also conspicuously post the division’s consumer information and assistance telephone number in the shop, and must include the registration number issued by the division in all advertisements.<sup>113</sup> In addition, the statutes specify what constitutes unlawful acts and practices by motor vehicle repair shops and their employees.<sup>114</sup>

If the department determines any motor vehicle repair shop is in violation of these provisions, it may impose penalties, revoke or suspend the shop’s registration, or commence legal proceedings in circuit court to enjoin the act or practice or seek relief on behalf of the customer.<sup>115</sup>

### ***Charitable Organizations***

Charitable organizations that intend to solicit contributions or funds are required to register with the department annually.<sup>116</sup> Charitable organizations are defined as:

any person who is or holds herself or himself out to be established for any benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or any person who in any

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<sup>109</sup> Section 559.904(3)(a)-(c), F.S.

<sup>110</sup> Section 559.904(10), F.S.

<sup>111</sup> Section 559.904(11), F.S.

<sup>112</sup> Sections 559.905, 559.907, 559.909, and 559.911, F.S.

<sup>113</sup> Section 559.916, F.S.

<sup>114</sup> Section 559.920(1)-(4), F.S.

<sup>115</sup> Sections 559.921, 570.07, and 570.544, F.S.

<sup>116</sup> Section 496.405, F.S.; as created by ch. 91-208, L.O.F.

manner employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation.<sup>117</sup>

The definition does not include religious institutions, educational institutions and state agencies. It also does not include political contributions solicited in accordance with the elections laws of this state.<sup>118</sup>

To register, the organizations must submit information relating to individuals or officers of the organization, specific financial reports, names of partners in the solicitation efforts, the organization's tax exempt status. The organization must also pay a fee that is assessed based on the amount of contributions received in the last fiscal year.<sup>119</sup>

Professional fundraising consultants and solicitors are also required to register with the department and satisfy similar registration requirements.<sup>120</sup> In addition, they are assessed an initial and renewal registration fee of \$300.

The statutes impose specific disclosure and accounting requirements on charitable organizations and professional solicitors.<sup>121</sup> In addition, the statutes specify what constitutes unlawful acts and practices by charitable organizations.<sup>122</sup> Violations are considered an unfair or deceptive act or practice or unfair method of competition in violation of the Florida Deceptive and Unfair Trade Practices Act.<sup>123</sup> In addition, the department is authorized to impose penalties, revoke or suspend the organization's registration, or commence legal proceedings in circuit court to enjoin the act or practice.<sup>124</sup>

### ***Dance Studios***

Ballroom dance studios are required to annually register with the department and pay a \$300 registration fee per studio location.<sup>125</sup> Dance Studios are defined as any person that:

engages in the sale of a ballroom dance studio lessons or services which are provided at a location specifically used for dance studio lessons or services; or secures floor space at a registered ballroom dance studio facility or other facility which is not primarily for rendering dance studio lessons or services and enters into contracts for future studio lessons or services.<sup>126</sup>

The statutes require contracts for services or lessons include specific provisions, and all copies of all contracts offered to the public must be submitted to the department.<sup>127</sup>

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<sup>117</sup> Section 496.404(1), F.S.

<sup>118</sup> Section 496.403, F.S. *Also see* s. 496.406, F.S.

<sup>119</sup> Section 496.405, F.S.

<sup>120</sup> Sections 496.409 and 496.410, F.S.

<sup>121</sup> Sections 496.411, 496.412, and 496.413 F.S.

<sup>122</sup> Sections 496.415, F.S.

<sup>123</sup> Section 496.416, F.S.

<sup>124</sup> Sections 496.419 and 496.420, F.S.

<sup>125</sup> Section 501.143(3), F.S.; as created by ch. 92-133, L.O.F.

<sup>126</sup> Section 501.143(2)(a), F.S.

<sup>127</sup> Section 501.143.(3)(a), F.S.

Registered studios are required to display the registration certificate issued by the department, and include the certificate number in all advertisements and contracts.<sup>128</sup>

Studios that have been in business for less than 3 years and receive an advance payment from a customer in excess of \$250 or enter into retail installment contracts for dance studio services or lessons in installments must maintain security in the form of a bond issued by a surety company admitted to do business in this state, an irrevocable letter of credit from a bank, or a guaranty agreement that is secured by a certificate of deposit.<sup>129</sup>

The statutes specify what constitutes unlawful acts and practices by dance studios.<sup>130</sup> In addition to suspending or revoking the registration of a dance studio, the department may pursue administrative, civil or criminal penalties.<sup>131</sup>

### ***Pawn Shops***

A person may not engage in business as a pawnbroker unless registered with the department.<sup>132</sup> To be eligible for registration, the applicant must have specified assets or a surety bond, identify each direct or beneficial owner of the business, submit fingerprints, submit a current financial statement, and not have a criminal history.<sup>133</sup> Pawnbrokers are required to pay an annual \$300 fee and maintain a net worth of at least \$50,000 or file a \$10,000 security in the form of a bond, letter of credit, or certificate of deposit.

The “Florida Pawnbroking Act” also requires businesses use a specified pawnbroker transaction form for each transaction, provides for certain record keeping and reporting procedures, and provides for holding procedures and procedures for recovering stolen goods.<sup>134</sup> Daily, the pawn shop must provide the original forms to the appropriate law enforcement agency for the previous business day which may be submitted electronically.<sup>135</sup>

The statute provides for restriction on pawn service charges<sup>136</sup> and other prohibited acts.<sup>137</sup> Violations may result in administrative, civil<sup>138</sup> or criminal penalties.<sup>139</sup>

### ***Health Studios***

Health Studios are required to register each of the health studios locations and pay a \$300 fee each year.<sup>140</sup> Health Studios are defined as

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<sup>128</sup> Section 501.143(3), F.S.

<sup>129</sup> Section 501.143(5), F.S.

<sup>130</sup> Section 501.143(6), F.S.

<sup>131</sup> Section 501.143(7), F.S.

<sup>132</sup> Section 539.001(3), F.S.; as created by ch. 96-242, L.O.F.

<sup>133</sup> Section 539.001(3), F.S.

<sup>134</sup> Section 539.001, F.S.

<sup>135</sup> Section 539.001(9), F.S.

<sup>136</sup> Section 539.001(11), F.S.

<sup>137</sup> Section 539.001(12), F.S.

<sup>138</sup> Section 539.001, F.S.

<sup>139</sup> Section 539.001(17), F.S.

<sup>140</sup> Section 501.015, F.S.; as created by ch. 90-312, L.O.F.



“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.”<sup>141</sup>

The definition does not include certain non-profit organizations, gymnastics schools, golf, tennis or racquetball clubs, facilities that do not use physical exercise equipment, and country clubs.<sup>142</sup>

The statutes require that all contracts must contain specific disclosures and cancellation provisions.<sup>143</sup> Each health studio is required to maintain for each separate business location a \$50,000 bond, irrevocable letter of credit, or guaranty agreement.<sup>144</sup> Studios are required to post at the registration desk or front desk, whichever is more prominent, at each business location the proof of registration certificate provided by the department and to include the registration number in all printed advertisements, contracts, and publications used by the health studio for a business location.<sup>145</sup>

There are criminal and civil penalties provided for specified violations by a registered health studio.<sup>146</sup> The department may, at any time during business hours, enter any business location of a registered health studio to examine the books or records and subpoena all necessary records when the department has reason to believe a violation has occurred. If the division determines any health studio is in violation of these provisions, the department is authorized to impose penalties, revoke or suspend the studio’s registration, or commence legal proceedings in circuit court to enjoin the act or practice or seek relief on behalf of the customer.<sup>147</sup>

### ***Sellers of Travel***

Sellers of Travel are required to register with the department annually.<sup>148</sup> When a seller of travel registers with the department, a registrant must provide to the department a number of items including, among other items, the registrant’s legal business or trade name, mailing address, and business locations, and the full names, addresses, telephone numbers, and social security numbers of its owners or corporate officers and directors and the Florida agent of the corporation.<sup>149</sup> The registration fee is \$300 per year.<sup>150</sup>

An independent agent acting on behalf of a seller of travel must also register annually with the department before engaging in business. An independent agent must provide certain information in an affidavit to the department including the independent agent’s full name, legal business or trade name, mailing address,

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<sup>141</sup> Section 501.12(1), F.S.

<sup>142</sup> Section 501.013, F.S.

<sup>143</sup> Sections 501.017, F.S.

<sup>144</sup> Section 501.016, F.S.

<sup>145</sup> Section 501.015, F.S.

<sup>146</sup> Section 501.0179, F.S.

<sup>147</sup> Sections 501.019, F.S.

<sup>148</sup> Section 559.928, F.S.; as created by ch. 88-363, L.O.F.

<sup>149</sup> Section 559.928(1), F.S.

<sup>150</sup> Section 559.928(2), F.S.

telephone number, and social security number, and the name or names and addresses of each seller of travel represented by the independent agent.<sup>151</sup>

An independent agent acting on behalf of a seller of travel must also register annually with the department before engaging in business. An independent agent must provide certain information in an affidavit to the department including the independent agent's full name, legal business or trade name, mailing address, telephone number, and social security number, and the name or names and addresses of each seller of travel represented by the independent agent.<sup>152</sup>

The statutes specifies contract disclosures and cancellation provisions,<sup>153</sup> specifies vacation certificate cancellation and refund provisions,<sup>154</sup> and requires copies of certain contracts be submitted with the registration application.<sup>155</sup> In addition, all contracts and advertisements must include the department's certificate number.<sup>156</sup> In addition, the statutes impose record keeping requirements on the registrants.<sup>157</sup>

The statutes list a number of prohibitions on sellers of travel and violations may result in administrative,<sup>158</sup> civil<sup>159</sup> or criminal penalties.<sup>160</sup> Violations may also be considered an unfair or deceptive act or practice or unfair method of competition in violation of the Florida Deceptive and Unfair Trade Practices Act.<sup>161</sup>

### ***Intrastate Movers***

Any mover wishing to do business in Florida must register annually with the department.<sup>162</sup> Intrastate Movers are defined as any person who engages in the transportation or shipment of household goods for compensation.<sup>163</sup> To obtain a registration certificate, the mover must file an application, pay a \$300 registration fee,<sup>164</sup> and meet statutory qualifications, including proof of insurance coverage.<sup>165</sup>

The law requires a mover to maintain cargo liability insurance coverage in the amount of at least \$10,000 per shipment<sup>166</sup> and limits the mover's liability to not less than 60 cents per pound of cargo.<sup>167</sup> A mover must also maintain minimum limits of motor vehicle coverage in the amounts of: \$50,000 per occurrence

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<sup>151</sup> Section 559.928(3), F.S. Importantly, the statutes do not authorize a registration fee for independent agents. The department reports there are between 5,000 – 6,000 independent agents registered annually.

<sup>152</sup> *Id.* at (3).

<sup>153</sup> Section 559.932, F.S.

<sup>154</sup> Section 559.933, F.S.

<sup>155</sup> Section 559.9295, F.S.

<sup>156</sup> Section 559.928(5) & (6), F.S.

<sup>157</sup> Section 559.931, F.S.

<sup>158</sup> Section 559.9335, F.S.

<sup>159</sup> Section 559.936, F.S.

<sup>160</sup> Section 559.937, F.S.

<sup>161</sup> Section 559.934, F.S.

<sup>162</sup> Section 507.03(1), F.S.; as created by ch. 2002-53, L.O.F.; Intrastate Movers may also be regulated by counties or municipalities, pursuant to local ordinance. *See* s. 507.13, F.S.

<sup>163</sup> Section 507.01(9), F.S.

<sup>164</sup> Section 507.01(3), F.S.

<sup>165</sup> Section 507.01(9), F.S.

<sup>166</sup> Section 507.04(1)(a), F.S.

<sup>167</sup> Section 507.04(1)(c), F.S.

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>168</sup>

The statute provides for contract requirements<sup>169</sup> and for delivery and storage requirements.<sup>170</sup> The statutes also provide for specific prohibitions on movers.<sup>171</sup> Violations may result in administrative,<sup>172</sup> civil,<sup>173</sup> or criminal penalties.<sup>174</sup> Violations may also be considered an unfair or deceptive act or practice, or unfair method of competition in violation of the Florida Deceptive and Unfair Trade Practices Act.<sup>175</sup>

### ***Game Promotions***

If a game promotion operator plans to offer a game promotion in which the total announced value of the prizes offered is greater than \$5,000, the operator must file with the department a copy of the rules and regulations of the game promotion and a list of the prizes and prize categories offered at least 7 days prior to the start of the game promotion with a filing fee of \$100.<sup>176</sup> Game promotion means, but is not limited to,

a contest, game of chance, or gift enterprise, conducted within or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present.<sup>177</sup>

This definition does not apply to bingo games.<sup>178</sup> An operator means “any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion.”<sup>179</sup> This definition does not apply to any charitable nonprofit organization.<sup>180</sup>

The operator of a game promotion is required to post the rules and regulations of a game promotion in each and every retail outlet or place where the game promotion may be played or participated in by the public and must also publish the rules and regulations in all advertising copies.<sup>181</sup> Every operator of a game promotion in which the total announced value of the prizes offered is greater than \$5,000 must establish a trust account or obtain a surety bond in an amount equivalent to the total value of all prizes offered.<sup>182</sup>

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<sup>168</sup> Section 507.04(1)(b)1.- 3., F.S.

<sup>169</sup> Section 507.05, F.S.

<sup>170</sup> Section 507.06, F.S.

<sup>171</sup> Section 507.07, F.S.

<sup>172</sup> Section 507.09, F.S.

<sup>173</sup> Section 507.110, F.S.

<sup>174</sup> Section 507.11, F.S.

<sup>175</sup> Section 507.08, F.S.

<sup>176</sup> Section 849.094, F.S.; as created by ch. 71-304, L.O.F.

<sup>177</sup> Section 849.094(1)(a), F.S.

<sup>178</sup> *Id.*

<sup>179</sup> Section 849.094(1)(b), F.S.

<sup>180</sup> *Id.*

<sup>181</sup> Section 849.094(3), F.S..

<sup>182</sup> Section 849.094(4)(a), F.S.

Once a game promotion has been completed, the game promotion operator must file a certified list of the names and addresses of the winners who have won prizes with a value of more than \$25 and the dates when the prizes were won within 60 days after the winners have been finally determined.<sup>183</sup> The game promoter must provide the list for free to anyone who requests it or may publish the list in a Florida newspaper within 60 days of when the winners were determined and must provide the department with a certified copy of the publication.<sup>184</sup> All winning entries must be held by the game promotion operator for 90 days after the close of the game.<sup>185</sup>

A game promoter may electronically file the required information. The department has a “e-Gov Service Center” that permits on-line filing with a credit card.

The department or the Attorney General may bring a civil action against any operator to enjoin the continued operation of the game promotion anywhere within the state.<sup>186</sup> Additionally, any person, firm, or corporation, or association or agent or employee, who engages in any unlawful acts or practices, or who violates any of the rules and regulations, is guilty of a second degree misdemeanor.<sup>187</sup>

### ***Telemarketing***

The Florida Telemarketing Act requires non-exempt<sup>188</sup> businesses<sup>189</sup> and their salespersons<sup>190</sup> that engage in the sale of consumer goods or services by telephone in Florida<sup>191</sup> to register with the department and pay a fee (\$1,500 for a telemarketer and \$50 for a salesperson). A commercial telephone seller is a person who engages in commercial telephone solicitation on his or her own behalf or through salespersons.<sup>192</sup> A salesperson is

any individual employed, appointed, or authorized by a commercial telephone seller, regardless of whether the commercial telephone seller refers to the individual as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the commercial telephone seller.<sup>193</sup>

Along with an application, an applicant must post security (surety bond, certificate of deposit, or letter of credit) of no less than \$50,000.<sup>194</sup> Each license issued is required to be renewed annually by paying a new fee and submitting a new application to the department.<sup>195</sup>

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<sup>183</sup> Section 849.094(5), F.S.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> Section 849.094(8)(b), F.S.

<sup>187</sup> Section 849.094(9)(a), F.S.

<sup>188</sup> Section 501.604, F.S., contains the list of exemptions.

<sup>189</sup> Section 501.605, F.S.; as created by ch. 91-237, L.O.F.

<sup>190</sup> Section 501.607, F.S.

<sup>191</sup> Section 501.605(1), F.S., provides that doing business in Florida includes telephone solicitation from a location in Florida or solicitation from other states or nation of purchasers located in Florida.

<sup>192</sup> Section 501.603(2), F.S.

<sup>193</sup> Section 501.603(10), F.S.

<sup>194</sup> Section 501.611, F.S.

<sup>195</sup> Section 501.609(1), F.S.

Within the first 30 seconds of a telephone call, a commercial telephone seller or salesperson is required to identify themselves by stating their name, the company on whose behalf the solicitation is being made, and the consumer goods or services being sold.<sup>196</sup> If a sale or an agreement to purchase is completed, the commercial telephone seller must inform the purchaser of their cancellation rights, state the license number issued by the department for both the commercial telephone seller and the salesperson, and give the street address of the commercial telephone seller.<sup>197</sup> If a commercial telephone seller represents to any prospective purchaser that the purchaser is or may be eligible to receive any gift, premium, bonus, or prize, however denominated, the commercial telephone seller must submit to the department a statement regarding the price<sup>198</sup>

The statutes also specify conditions for denying registration or renewal,<sup>199</sup> provide specific contract requirements<sup>200</sup> and provide specific violations.<sup>201</sup>

The department or the Attorney General may seek civil penalties of up to \$10,000 for violations.<sup>202</sup> Additionally, it is a third degree felony to solicit purchasers on behalf of a commercial telephone seller if not currently licensed with the department.<sup>203</sup> In addition to any other penalties or remedies provided under law, a person who is injured by a violation of the provisions of this part may bring a civil action for recovery of actual damages or punitive damages, including costs, court costs, and attorney's fees.<sup>204</sup>

### ***Do Not Call Program***

Florida's "Do Not Call" law provides Florida consumers who pay an initial \$10 per telephone number the opportunity to place a residential, mobile, or pager telephone number on the "no sales solicitation calls" listing, administered by the department.<sup>205</sup> The law prohibits most telephone solicitors from calling consumers who have registered their telephone numbers with the state. An annual renewal subscription fee of \$5 per telephone number is required each year thereafter.<sup>206</sup>

The division is required to investigate any complaints received concerning violations of the Florida "Do Not Call" program. If, after investigating any complaint, the division finds that there has been a violation, the division or the Department of Legal Affairs is authorized to bring an action to impose a civil penalty and to seek other relief, including injunctive relief.<sup>207</sup>

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<sup>196</sup> Section 501.613(1), F.S.

<sup>197</sup> Section 501.613(2), F.S.

<sup>198</sup> Section 501.614, F.S.

<sup>199</sup> Section 501.612, F.S.

<sup>200</sup> Section 501.615, F.S.

<sup>201</sup> Sections 501.607(4) and 501.616, F.S.

<sup>202</sup> Section 501.619, F.S.

<sup>203</sup> Section 501.623, F.S.

<sup>204</sup> Section 501.625, F.S.

<sup>205</sup> Section 501.059(3)(a), F.S.; as created by ch. 87-253, L.O.F.

<sup>206</sup> Section 501.059(3)(a), F.S.

<sup>207</sup> Section 501.059(8), F.S.

## Findings

### *Funding*

Section 216.0236(1), F.S., created by ch. 2006-93, L.O.F., states that:

It is the intent of the Legislature that all costs of providing a regulatory service or regulating a profession or business be borne solely by those who receive the service or who are subject to regulation.

As shown in **TABLE 1**, the Division of Consumer Services is funded primarily by fees imposed on the businesses required to be registered with the division. The department reports that excess revenue from these registered businesses and General Revenue is used to support its call center operations associated with processing consumer complaints related to non-regulated activities, enforcement of the Lemon Law and price-gouging statutes, and businesses registered as Intrastate Movers.<sup>208</sup>

The statutes require motor vehicle dealers to collect a fee from consumers to fund the implementation of the Lemon Law.<sup>209</sup> The Attorney General is required to share one-fourth of the collected fees with the department to cover costs associated with the program.<sup>210</sup> In FY 2006-07, the department received \$528,209.85 in transfers from the Attorney General's Office.<sup>211</sup> However, even with the transfers, the Lemon Law program had a deficit and excess revenues from other program areas subsidized the department's costs associated with implementing the Lemon Law program.<sup>212</sup>

The department processes and investigates price gouging complaints through its divisions of Consumer Services and Standards with assistance from the Office of Agricultural Law Enforcement and Office of General Counsel when necessary.<sup>213</sup> The department does not receive funding for price gouging enforcement. The department pays for this activity out of the operating budget for that year.<sup>214</sup>

The registration fees for regulation of Intrastate Movers are insufficient to offset the costs of running the program. General Revenue subsidized the cost of these services. Currently, Intrastate Movers pay a \$300 registration fee. To become self-supporting, the department estimates the fee would have to be increased to \$500.<sup>215</sup>

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<sup>208</sup> Department of Agriculture and Consumer Services' Statement of Revenues and Expenditures for Fiscal Year 2006/07.

<sup>209</sup> Section 681.117, F.S.

<sup>210</sup> *Id.*

<sup>211</sup> Department of Agriculture and Consumer Services' Statement of Revenues and Expenditures for Fiscal Year 2006/07.

<sup>212</sup> *Id.*

<sup>213</sup> Information submitted by The Department of Agriculture and Consumer Services, in response to a request by the Senate Commerce Committee, November 16, 2007.

<sup>214</sup> *Id.*

<sup>215</sup> Gregg Conrad, Office of Inspector General, Department of Agriculture and Consumer Services, October 22, 2007.

Travel Independent Agents are required to register with the department but are not assessed a registration fee. Associated regulatory costs are funded by fees and fines assessed against Sellers of Travel.<sup>216</sup>

### ***Necessity***

The department reports that the services provided by the division provide a public benefit and promote public safety by aiding consumers that have been aggrieved by a business through its complaint process and by helping consumers make informed decisions by providing information such as registration status and the number of complaints filed against businesses.<sup>217</sup>

This conclusion is echoed by OPPAGA in its 2001 Justification Review of the Consumer Protection Program.<sup>218</sup> OPPAGA found that the programs are “beneficial to Florida businesses, tourists, and citizens.”<sup>219</sup> Additionally, OPPAGA found that:

Although larger local governments could assume some of the program’s duties if the program were abolished, the regulation provided may not be uniform and would probably not be provided to all consumers statewide. Consumers would also lose a centralized location for obtaining referrals to state programs that can assist them with business disputes if the program were eliminated.<sup>220</sup>

In 2001, MGT of America was commissioned by the Florida Legislature to conduct a review of the Department of Agriculture and Consumer Services. MGT found that the division serves Florida by providing “an outlet for consumer information, complaints, and inquiries.”<sup>221</sup> MGT recommended that the division continue providing services and no program should be discontinued.<sup>222</sup>

Complaint activity indicates the public relies on the department to assist with resolving complaints against businesses, both those registered with the department and those not regulated by the state. Absent this option, consumers would likely seek redress through civil litigation or local government enforcement, if available.

For businesses and professionals not regulated by the state, the department, as a state complaint clearinghouse, receives complaints and attempts informal mediation. The division reports that of the 27,088 complaints it received through the call center in the past year, 14,979 (55 percent) were related to non-regulated businesses.<sup>223</sup> The department reports over \$2 million restitution/refunds collected in FY

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<sup>216</sup> Information provided by department staff, October 10, 2007.

<sup>217</sup> The Department of Agriculture and Consumer Services, *Agency Report to the Sunset Advisory Committee*, December 20, 2006.

<sup>218</sup> OPPAGA Report: General Revenue Savings Possible in Consumer Protection Program, Report No. 01-51. OPPAGA reviewed programs within the Divisions of Consumer Services, Standards, and Agricultural Environmental Services.

<sup>219</sup> *Id.* at p. 3.

<sup>220</sup> *Id.*

<sup>221</sup> MGT of America, Department of Agriculture, Zero-Based Budgeting Preliminary Review, 2001. A final report was not submitted to the Legislature.

<sup>222</sup> *Id.*

<sup>223</sup> Information provided by department staff, October 10, 2007.

2006/07.<sup>224</sup> **TABLE 4** shows the top ten complaints against non-regulated business received by the department call center in FY 2006/07.

As for those businesses which are required to be registered by the department, the statutes impose registration requirements, required business practices, prohibitions and specify violations. These statutory requirements indicate the Legislature attempted to address and prevent specific unfair or unethical business practices, which would be the responsibility of the consumer (or the states attorneys) to enforce should the department's regulatory responsibilities be repealed.

**TABLE 4**  
**Division of Consumer Services**  
**Complaints Against Non-Registered / Non Regulated Businesses**  
**FY 2006-2007**

<b>Top 10 Non-regulated Entity Complaints</b>	<b>Number of Complaints</b>	<b>Referred to another agency</b>
Communications	1938	147
Construction	1710	976
Credit/Banking	1938	754
MVR sales/accessories	1233	680
Electronic Equipment	785	34
Landlord/Tenant	692	132
Real Estate Broker/Salesperson	651	343
Home Furnishings	638	31
Medical	558	227
Insurance	545	414

Source: The Department of Agriculture and Consumer Services, August 8, 2007.

**TABLE 5** shows the number of complaints against registered businesses, and the enforcement activities by the department.

**TABLE 5**  
**Division of Consumer Services**  
**Registered Entities: Complaints and Enforcement**  
**FY 2006-2007**

<b>Type of Entity</b>	<b>Number of Registrants</b>	<b>Number of Complaints</b>	<b>Percent of Complaints to Registrants</b>	<b>Number of Investigations</b>	<b>Number of Enforcement Actions</b>
Dance Studios	200	10	5	1	24
Game Promotions	5,689	115	2	6	646
Health Studios	2,139	695	32	38	286
Intrastate Moving	1,081	458	45	77	402
Motor Vehicle Repair	24,862	1,964	8	127	2,103
Pawn Shops	1,173	25	2	10	47
Business Opportunities	2,408	343	14	7	22
Sellers of Travel	10,787	2,666	25	85	424
Solicitors of Contributions	13,503	165	1	31	968
Telemarketers	3,426	850	25	28	98

Source: The Department of Agriculture and Consumer Services, August 8, 2007.

<sup>224</sup> *Id.*



As part of its enforcement activity, the department also conducts periodic inspection “sweeps.” **TABLE 6** shows the number of businesses inspected by the department and the percent of those businesses found to be in violation of regulatory standards imposed by law. (These sweeps were performed in Seminole, Palm Beach, Manatee, Pasco, and Pinellas counties in FY 2007-08.)

**TABLE 6**  
**Division of Consumer Services**  
**FY 07-08 County Sweeps**

Type of Program	Number of Audits	Percent of Businesses in Violation
Health Studios	231	15
Motor Vehicle Repair	1506	20
Telemarketers	63	54
Sellers of Travel	188	1

Source: The Department of Agriculture and Consumer Services, October 22, 2007.

OPPAGA reports that, over the years, deregulating some of the regulated business sectors has been contemplated.<sup>225</sup> However, OPPAGA notes there is opposition to deregulation because the statutes provide enforcement authority to take action against fraudulent businesses.<sup>226</sup> Further, OPPAGA found that “eliminating the programs would result in minimal costs avoidance, as registration fees for entities...are currently more than sufficient to cover the department’s regulatory costs.”<sup>227</sup>

While the necessity of regulating the 10 business sectors through registration with the department is defensible, there remains the outstanding issue relating to the role of state government in interjecting itself into what are essentially contractual relationships between the consumer and businesses and the relative cost/benefit of such registration.

A secondary issue relates to the relative risk to the consumer absent state regulation and whether this risk outweighs the costs inherent in such regulation. These costs include direct costs to the regulated businesses, the corresponding indirect costs to the consumer, and the indeterminate costs to consumers when the government, through regulation, limits or discourages entry of businesses into the marketplace, thereby reducing competition. For the 10 business sectors registered with the department, it is the financial risk to the consumer that is to be evaluated, as the regulation relates primarily to business practices, rather than professional practices related to quality of service delivery or technical competence.

If the risk outweighs the cost of regulation, then the most cost effective means to ensure compliance should be evaluated. Choices range from requiring individual action by the consumer (through the courts) to requiring screening, monitoring and enforcement through a regulatory entity.

These are fundamental policy issues.

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<sup>225</sup> OPPAGA Justification Review: General Revenue Savings Possible in Consumer Protection Program, November 2001, Report No. 01-51, p. 14.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

In our review of the 10 business sectors regulated by the department, we relied upon the criteria outlined in Appendix B and C of the report. Based on these criteria, Dance Studios may not warrant regulation by the department, primarily because there are relatively few dance studios and few complaints against those studios. (See TABLE 5) Consequently, the relative risk to the general public is minimal and may not warrant regulation by the state.

### ***Duplication***

There may appear to be some degree of duplication between the department and the Attorney General's Office.

In 2001, OPPAGA reviewed the department's consumer protection responsibilities, and issued the following finding:

The Consumer Protection Program is logically placed in the Department of Agriculture and Consumer Services, which has a mission of supporting Florida's agricultural economy, as well as a mission to protect Florida's consumers. Although the activities performed by the Division of Consumer Services often reside with attorney generals' offices in other states, we did not identify a compelling reason to move most of these activities to the Office of the Attorney General (also known as the Department of Legal Affairs). With the exception of the Lemon Law Program, we did not identify potential cost savings or increased efficiencies from moving the other program activities.<sup>228</sup>

Although it is not statutorily assigned to serve as the complaint clearinghouse, the Office of the Attorney General operates a consumer unit that provides some comparable services to the clearinghouse operated by the department. The core mission of the office is to identify and track fraudulent activity, and, upon seeing a pattern of this activity, to share the information with the Attorney General's economic crimes unit. However, some of the calls that come into the center are more general consumer inquiries or complaints and may relate to the jurisdiction of another state agency.<sup>229</sup>

Both the department and the Attorney General's Office share the responsibility for implementing the Lemon Law program in Florida. The department receives the initial complaint and screens the complaint for arbitration eligibility and then forwards the eligible complaint to the Attorney General's Office for arbitration.<sup>230</sup> Additionally, the department is required by law to maintain a toll-free number for consumers to obtain information regarding their rights and obligations under the Lemon Law.<sup>231</sup> **TABLE 7** shows the departments activities related to enforcing the law.

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<sup>228</sup> OPPAGA Report: General Revenue Savings Possible in Consumer Protection Program, Report No. 01-51, p. 4.

<sup>229</sup> See Senate Interim Project Report 2005-113, November, 2004, by the Commerce and Consumer Services Committee.

<sup>230</sup> Section 681.109(5), F.S.

<sup>231</sup> Section 681.103(3), F.S.

**TABLE 7**  
**Division of Consumer Services**  
**Lemon Law Inquiries & Settlements**  
**FY 2006-2007**

Type	Number
Phone Calls Received	16,975
Lemon Law Arbitration Request	982
Informal Dispute Settlement Procedure Files Processed	3,268
Informal Dispute Settlement Procedure Audits Conducted	387

Source: The Department of Agriculture and Consumer Services, August 8, 2007.

Previously, OPPAGA found that the department and the Attorney General's Office duplicate the eligibility review, which qualifies consumers for arbitration, and recommended eliminating this duplication.<sup>232</sup> In response, the department stated that there is no duplication of services and that the Lemon Law responsibilities are segregated between the consumer complaint process and the formal arbitration process. The overlap in the review process is a re-verification, not duplication.<sup>233</sup> The Attorney General's Office also stated that there is no duplication of services.<sup>234</sup>

Similarly, both the department and the Attorney General's Office share the responsibility for enforcing the "Price-Gouging" restrictions in Florida Law.<sup>235</sup> During a declared state of emergency, prices for essential commodities may not be increased, unless the increases are attributable to added costs incurred by the seller of that commodity.<sup>236</sup> The department, Office of the State Attorney and the Department of Legal Affairs are authorized to enforce this section.<sup>237</sup> Both the department and the Attorney General's Office have telephone numbers and a complaint process.<sup>238</sup> However, the department reports that the two agencies coordinate their price gouging activities and have developed a Memorandum of Understanding to formalize this coordination.<sup>239</sup>

### ***Efficiency***

Both on its own initiative and as a result of changes in the law, the department has implemented two strategies to reduce costs associated with processing annual registrations, registration renewals and related documents, thereby allowing resources to be allocated to enforcement activities and funding for systems designed to increase efficiency.

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<sup>232</sup> OPPAGA Report: Florida's System for Handling Consumer Complaints Could Be Improved, Report No. 06-51.

<sup>233</sup> The department's response to OPPAGA Report: Florida's System for Handling Consumer Complaints Could Be Improved, Report No. 06-51, and subsequent discussions with the department staff.

<sup>234</sup> Senate Commerce Committee Meeting, December 11, 2007.

<sup>235</sup> Section 501.160(8), F.S.

<sup>236</sup> Section 501.160(7), F.S.

<sup>237</sup> Section 501.160(8), F.S.

<sup>238</sup> OPPAGA Report: Florida's System for Handling Consumer Complaints Could Be Improved, Report No. 06-51, p. 7.

<sup>239</sup> Information provided by DACS staff, October 10, 2007; OPPAGA Report: Florida's System for Handling Consumer Complaints Could Be Improved, Report No. 06-51, p. 14. Also see *Memorandum of Understanding between the Florida Department of Agriculture and Consumer Services and the Florida Office of the Attorney General*, 11/01/07.

- Motor Vehicle Repair Shop registrations and Game Promotion packages may now be submitted on-line, thereby increasing the efficiency of processing such submissions.
- Since 2003, Motor Vehicle Repair Shops are required to register biennially, rather than annually, thereby reducing staff resource committed to registration activities.

## **Recommendations**

To address the funding issues, the Legislature should:

- Impose a registration fee on Travel Independent Agents, commensurate with the cost to the department for processing registrations; and
- Increase fees on Intrastate Movers to enable the program to be self-supporting.

To address efficiency issues, the Legislature should:

- Provide additional funds or funding authority to further implement on-line registration, registration renewals and related documents, thereby allowing resources be allocated to enforcement activities and funding for systems designed to increase efficiency.
- Consider requiring biennial registration, rather than annual registration, of the businesses regulated by the Division of Consumer Services. The department recommends biennial registrations for the following businesses: Health Studios, Pawn Shops, and Intrastate Movers.

While the necessity and efficiency of regulating the 10 business sectors through registration with the department is defensible, the Legislature should consider whether dance studios should be required to be registered with the department. If the registration requirement is removed, the current statutory requirements relating to contracts and prohibited acts should be retained.

## Advisory Councils and Committees

The statutes create four “advisory councils” to assist the department in the areas of Licensing, Standards, and Consumer Services. Additionally, the department created two other advisory councils in Standards area.<sup>240</sup>

### The Private Investigation, Recovery, and Security Advisory Council

The Private Investigation, Recovery, and Security Advisory Council was created to provide advice and recommendations pertaining to the private investigative, recovery, and security industries.<sup>241</sup> This council is required to meet at least four times a year.<sup>242</sup> The members do not receive compensation but may receive state per diem and travel expenses for officially called meetings.<sup>243</sup>

### The Florida Propane Gas, Safety, Education and Research Council

The Florida Propane Gas, Safety, Education and Research Council consist of 14 industry members and one citizen member.<sup>244</sup> The purpose of the council is to implement the mandates of the Florida Propane Gas Safety, Education and Research Act.<sup>245</sup> The Florida Propane Gas, Safety, Education and Research Council is required to meet at least once a year.<sup>246</sup> The members do not receive compensation but may receive per diem and travel expenses.<sup>247</sup>

### The Florida Liquid Propane Gas Advisory Council

The Florida Liquid Propane Gas Advisory Council, created by the department with authority provided in s. 570.0705, F.S., consists of members from the Florida Propane Gas Association. The Florida Liquid Propane Gas Advisory Council provides input on the regulation of propane. The Florida Liquid Propane Gas Advisory Council meets once a year.<sup>248</sup>

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<sup>240</sup> Section 570.0705, F.S., provides the commissioner with the authority to appoint advisory committees to assist the department with its duties and responsibilities.

<sup>241</sup> Section 493.6104(5), F.S.

<sup>242</sup> Section 493.6104(4), F.S.

<sup>243</sup> Section 493.6104(6), F.S.

<sup>244</sup> Section 527.22(2)(b), F.S.

<sup>245</sup> Section 527.20(3)(a), F.S., which requires the council to study problems that arise from the production, transportation, marketing, and use of propane gas and to advise the commissioner of recommendations and policies.

<sup>246</sup> Section 527.22(3)(a), F.S.

<sup>247</sup> Section 527.22(5), F.S.

<sup>248</sup> The Department of Agriculture and Consumer Services, *Agency Report to the Sunset Advisory Committee*, December 20, 2006.

## The Florida Amusement Device and Attraction Advisory Council

The Florida Amusement Device and Attraction Advisory Council, created by the department with authority provided in s. 570.0705, F.S., consists of industry members appointed by the commissioner. The Florida Amusement Device and Attraction Advisory Council meets twice a year to discuss patron and ride safety issues, ride inspections, ride equipment, industry concerns.<sup>249</sup>

## The Motor Vehicle Repair Advisory Council

The Motor Vehicle Repair Advisory Council was created to advise and assist the department in implementing and reviewing the rules relating to the Florida Motor Vehicle Repair Act.<sup>250</sup> It advises the department on matters relating to educational grants, advancements in industry standards and practices, and other issues that require technical expertise and consultation.<sup>251</sup> The Motor Vehicle Repair Advisory Council consists of industry and consumer members.<sup>252</sup> The members do not receive compensation but may receive per diem and travel expenses.<sup>253</sup>

## The Florida Consumers' Council

The Florida Consumers' Council was created to advise and assist the department with implementing its responsibilities.<sup>254</sup> Specifically, the Florida Consumers' Council advises the department on issues relating to consumer protection, makes recommendations for changes and improvements, and reviews proposed legislation. Members are selected from various areas of consumer interest.<sup>255</sup> The members do not receive compensation but may receive per diem and travel expenses.<sup>256</sup>

## Review and Evaluation

Committee guidelines for review of agency advisory committees include:

- Was the agency advisory committee created to resolve a problem or provide a service? If so, has the problem been solved or the service provided?
- Would there be an adverse effect on the agency or the public if the advisory body were abolished?
- Is the advisory body representative of the public and stakeholders impacted by its actions?

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<sup>249</sup> The Department of Agriculture and Consumer Services, *Agency Report to the Sunset Advisory Committee*, December 20, 2006.

<sup>250</sup> Section 559.9221, F.S.

<sup>251</sup> Section 559.9221(5), F.S.

<sup>252</sup> Section 559.9221(1), F.S.

<sup>253</sup> Section 559.9221(3), F.S.

<sup>254</sup> Section 570.543, F.S.

<sup>255</sup> Section 570.543(1), F.S.

<sup>256</sup> Section 570.0705(10), F.S.

OPPAGA was asked to evaluate the advisory committees of the department by the Joint Legislative Sunset Committee.<sup>257</sup> The criteria OPPAGA used was whether the committees:

- Serve a public purpose;
- Facilitate public participation in an agency's activities and provide agency staff with stakeholder expertise without duplicating the efforts of other entities;
- Are federally mandated; and
- Fulfill their public purpose.

## Findings

OPPAGA concluded that “most of the department’s advisory committees serve a public purpose by providing the department with stakeholder input or expertise in a variety of matters.”<sup>258</sup> OPPAGA did not recommend abolishing any of the advisory committees in the divisions of Consumer Services, Licensing, or Standards.

The Florida Propane Gas, Education, Safety, and Research Council and the Florida Liquefied Petroleum Gas Advisory Board were created to aid the department with liquefied petroleum regulation. However, the two councils were created with different missions. The Florida Propane Gas, Education, Safety, and Research Council provides oversight of industry marketing assessment programs and determines how the revenues from the assessments are used for industry and consumer safety and education. The Florida Liquefied Petroleum Gas Advisory Board acts as an advisory committee to the Commissioner of Agriculture on LP gas technical, policy, and enforcement issues.

The Florida Propane Gas, Education, Safety, and Research Council had \$800,000 in expenses for FY 2006-07, and the Florida Liquefied Petroleum Gas Advisory Board did not have any expenses for FY 2006-07.<sup>259</sup> In fact, the Florida Liquefied Petroleum Gas Advisory Board has not had any expenses for the preceding 2-fiscal years.<sup>260</sup>

Both advisory councils are comprised of members from the LP gas industry. There is one public member on the Florida Propane Gas, Education, Safety, and Research Council, and the Florida Liquefied Petroleum Gas Advisory Board does not have a public member.<sup>261</sup> Five members of the 15 member council also serve on the nine member board. However, the department reports that the latter did not have any expenses

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<sup>257</sup> OPPAGA Memorandum to the Joint Legislative Sunset Committee, The Department of Agriculture and Consumer Services Advisory Committees, September 11, 2007.

<sup>258</sup> OPPAGA Memorandum to the Joint Legislative Sunset Committee, The Department of Agriculture and Consumer Services Advisory Committees, September 11, 2007.

<sup>259</sup> The Department of Agriculture and Consumer Services, *Agency Report to the Sunset Advisory Committee*, December 20, 2006.

<sup>260</sup> The Department of Agriculture and Consumer Services, *Agency Report to the Sunset Advisory Committee*, December 20, 2006.

<sup>261</sup> Information submitted by The Department of Agriculture and Consumer Services, in response to a request by the Senate Commerce Committee, November 16, 2007.

for the past 3-fiscal years. Consequently, there would be no cost savings if the two councils were combined.<sup>262</sup>

## **Recommendations**

The department's advisory councils and commissions related to the divisions of Licensing, Standards and Consumer Services within the Department of Agriculture and Consumer Services should be retained.

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<sup>262</sup> Information submitted by The Department of Agriculture and Consumer Services, in response to a request by the Senate Commerce Committee, November 16, 2007.



## Appendix A

# The 2007 Florida Statutes

## CHAPTER 11

### LEGISLATIVE ORGANIZATION, PROCEDURES, AND STAFFING

11.901 Short title.

11.902 Definitions.

11.903 Legislative Sunset Review Committees and the Joint Legislative Sunset Committee.

11.904 Staff.

11.905 Schedule for reviewing state agencies and advisory committees.

11.9055 Abolition of state agencies and advisory committees.

11.906 Agency report to the Legislature.

11.907 Legislative review.

11.908 Committee duties.

11.910 Information for review.

11.911 Committee recommendations.

11.917 Procedure after termination.

11.918 Joint Legislative Sunset Committee; powers; assistance of state agencies.

11.919 Assistance of and access to state agencies.

11.920 Saving provision.

**11.901 Short title.**--Sections 11.901-11.920 may be cited as the "Florida Government Accountability Act."

**History.**--s. 1, ch. 2006-146.

**11.902 Definitions.**--As used in ss. 11.901-11.920, the term:

(1) "State agency" or "agency" means a department as defined in s. 20.03(2) or any other administrative unit of state government scheduled for termination and prior review under this chapter.

(2) "Advisory committee" means any examining and licensing board, council, advisory council, committee, task force, coordinating council, commission, or board of trustees as defined in s. 20.03(3), (7), (8), (9), (10), or (12) or any group, by whatever name, created to provide advice or recommendations to one or more agencies, departments, divisions, bureaus, boards, sections, or other units or entities of state government.

(3) "Committee" means any Legislative Sunset Review Committee appointed pursuant to s. 11.903.

(4) "Joint committee" means the Legislative Sunset Committee appointed pursuant to s. 11.903.

**History.**--s. 2, ch. 2006-146; s. 1, ch. 2007-161.

### **11.903 Legislative Sunset Review Committees and the Joint Legislative Sunset Committee.--**

(1) The Senate and House of Representatives may, pursuant to the rules of each house, appoint one or more standing or select committees as Legislative Sunset Review Committees to conduct independent reviews for each house regarding the agency sunsets required by ss. 11.901-11.920.

(2) The Senate and House of Representatives shall appoint a Joint Legislative Sunset Committee for the purposes of overseeing the agency review process required by ss. 11.901-11.920 and of making recommendations to the Legislature.

(3) Members of the committees and joint committee shall serve at the pleasure of their appointing presiding officer for a term of 2 years each or until the next general election, whichever occurs earlier.

(a) The Legislative Sunset Committee established under this subsection shall be a joint committee composed of 10 members: five members of the Senate appointed by the President of the Senate and five members of the House of Representatives appointed by the Speaker of the House of Representatives.

(b) The presiding officer of each house shall appoint a chair who shall serve as co-chair of the joint committee established under this subsection. Each co-chair shall serve at the pleasure of the appointing presiding officer for a term of 2 years or until the next general election.

(4) If a legislative member ceases to be a member of the house from which he or she was appointed, the member vacates his or her membership on the committee or joint committee.

**History.**--s. 3, ch. 2006-146; s. 2, ch. 2007-161.

**11.904 Staff.**--The Senate and the House of Representatives may each employ staff to work for the joint committee on matters related to joint committee activities. The Office of Program Policy Analysis and Government Accountability shall provide primary research services as directed by the committee and the joint committee and assist the committee in conducting the reviews under s. 11.910. Upon request, the Auditor General shall assist the committees and the joint committee.

**History.**--s. 4, ch. 2006-146; s. 3, ch. 2007-161.

**11.905 Schedule for reviewing state agencies and advisory committees.**--The following state agencies, including their advisory committees, or the following advisory committees of agencies shall be reviewed according to the following schedule:

(1) Reviewed by July 1, 2008:

- (a) Statutorily created responsibilities of the Fish and Wildlife Conservation Commission.
- (b) Department of Agriculture and Consumer Services.
- (c) Department of Citrus, including the Citrus Commission.
- (d) Department of Environmental Protection.
- (e) Department of Highway Safety and Motor Vehicles.
- (f) Water management districts.

(2) Reviewed by July 1, 2010:

- (a) Department of Children and Family Services.
- (b) Department of Community Affairs.
- (c) Department of Management Services.
- (d) Department of State.

(3) Reviewed by July 1, 2012:

- (a) Advisory committees for the Florida Community College System.
- (b) Advisory committees for the State University System.
- (c) Agency for Workforce Innovation.
- (d) Department of Education.
- (e) Department of the Lottery.

(4) Reviewed by July 1, 2014:

- (a) Agency for Health Care Administration.
- (b) Agency for Persons with Disabilities.
- (c) Department of Elderly Affairs.
- (d) Department of Health.

(5) Reviewed by July 1, 2016:

- (a) Department of Business and Professional Regulation.
- (b) Department of Transportation.
- (c) Department of Veterans' Affairs.

(6) Reviewed by July 1, 2018:

- (a) Advisory committees for the State Board of Administration.
- (b) Department of Financial Services, including the Financial Services Commission.
- (c) Department of Revenue.

(7) Reviewed by July 1, 2020:

- (a) Department of Corrections.
- (b) Department of Juvenile Justice.
- (c) Department of Law Enforcement.
- (d) Department of Legal Affairs.
- (e) Justice Administrative Commission.
- (f) Parole Commission.

(8) Reviewed by July 1, 2022:

- (a) Executive Office of the Governor.
- (b) Florida Public Service Commission.

Upon completion of this cycle, each agency shall again be subject to sunset review 10 years after its initial review.

**History.**--s. 5, ch. 2006-146; s. 4, ch. 2007-161.

### **11.9055 Abolition of state agencies and advisory committees.--**

(1) An agency subject to review by the Legislature shall be abolished on June 30 following the date of review specified in s. 11.905, unless the Legislature continues the agency or advisory committee; however, an agency may not be abolished unless the Legislature finds, pursuant to law, that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made for the transfer to a successor agency of all duties and obligations relating to bonds, loans, promissory notes, lease-purchase agreements, installment sales contracts, certificates of participation, master equipment financing agreements, or any other form of indebtedness such that security therefor and the rights of bondholders or holders of other indebtedness are not impaired.

(2) If the Legislature does not take action before the date of review to continue the agency or advisory committee, the agency shall submit its legislative budget request consistent with the provisions of chapter 216. Such agency shall continue to be subject to annual sunset review by the Legislature until the Legislature enacts legislation relating to the agency's continuation, modification, or termination.

**History.**--s. 6, ch. 2006-146; s. 5, ch. 2007-161.

**11.906 Agency report to the Legislature.**--Not later than July 1, 2 years preceding the year in which a state agency and its advisory committees are scheduled to be reviewed, the agency shall provide the Legislature with a report that includes:

- (1) The performance measures for each program and activity as provided in s. 216.011 and 3 years of data for each measure that provides actual results for the immediately preceding 2 years and projected results for the fiscal year that begins in the year that the agency report is scheduled to be submitted to the Legislature.
- (2) An explanation of factors that have contributed to any failure to achieve the legislative standards.
- (3) The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.
- (4) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which public participation has resulted in rules compatible with the objectives of the agency.
- (5) The extent to which the agency has complied with applicable requirements of state law and applicable rules regarding purchasing goals and programs for small and minority-owned businesses.
- (6) A statement of any statutory objectives intended for each program and activity, the problem or need that the program and activity were intended to address, and the extent to which these objectives have been achieved.
- (7) An assessment of the extent to which the jurisdiction of the agency and its programs overlap or duplicate those of other agencies and the extent to which the programs can be consolidated with those of other agencies.
- (8) An assessment of less restrictive or alternative methods of providing services for which the agency is responsible which would reduce costs or improve performance while adequately protecting the public.
- (9) An assessment of the extent to which the agency has corrected deficiencies and implemented recommendations contained in reports of the Auditor General, the Office of Program Policy Analysis and Government Accountability, legislative interim studies, and federal audit entities.
- (10) The process by which an agency actively measures quality and efficiency of services it provides to the public.
- (11) The extent to which the agency complies with public records and public meetings requirements under chapters 119 and 286 and s. 24, Art. I of the State Constitution.
- (12) The extent to which alternative program delivery options, such as privatization, outsourcing, or insourcing, have been considered to reduce costs or improve services to state residents.
- (13) Recommendations to the Legislature for statutory, budgetary, or regulatory changes that would improve the quality and efficiency of services delivered to the public, reduce costs, or reduce duplication.

(14) The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished.

(15) A list of all advisory committees, including those established in statute and those established by managerial initiative; their purpose, activities, composition, and related expenses; the extent to which their purposes have been achieved; and the rationale for continuing or eliminating each advisory committee.

(16) Agency programs or functions that are performed without specific statutory authority.

(17) Other information requested by the Legislature.

Information and data reported by the agency shall be validated by its agency head and inspector general before submission to the Legislature.

**History.**--s. 7, ch. 2006-146; s. 6, ch. 2007-161.

**11.907 Legislative review.**--Upon receipt of an agency report pursuant to s. 11.906, the joint committee may and the appropriate committee shall conduct a review of the agency and may direct the Office of Program Policy Analysis and Government Accountability to review the agency and its advisory committees, including an examination of the cost of each agency program, an evaluation of best practices and alternatives that would result in the administration of the agency in a more efficient or effective manner, an examination of the viability of privatization or a different state agency performing the functions, and an evaluation of the cost and consequences of discontinuing the agency. The reviews shall be comprehensive in scope and shall consider the information provided by the agency report in addition to information deemed necessary by the office and the appropriate committee or the joint committee. The Office of Program Policy Analysis and Government Accountability shall submit its report to the Legislature in a timeframe prescribed by the committee requesting the review. The Office of Program Policy Analysis and Government Accountability shall include in its reports recommendations for consideration by the Legislature.

**History.**--s. 8, ch. 2006-146; s. 7, ch. 2007-161.

**11.908 Committee duties.**--No later than March 1 of the year in which a state agency or its advisory committees are scheduled to be reviewed, the committee shall and the joint committee may:

(1) Review the information submitted by the agency and the reports of any independent reviews directed by the committee, including those conducted by the Office of Program Policy Analysis and Government Accountability.

(2) Consult with the Legislative Budget Commission, relevant substantive and appropriations committees of the Senate and the House of Representatives, the Governor's Office of Policy and Budgeting, the Auditor General, and the Chief Financial Officer, or their successors, relating to the review of the agency and its advisory committees.

(3) Hold public hearings to consider this information as well as other information and testimony that the committee or joint committee deems necessary.

(4) Present to the President of the Senate and the Speaker of the House of Representatives a report on the agencies and advisory committees scheduled to be reviewed that year by the Legislature. In the report, the committee shall include its specific findings and recommendations regarding the information considered pursuant to s. 11.910, make recommendations as described in s. 11.911, and

propose legislation as it considers necessary. In the joint committee report, the joint committee shall include its specific findings and recommendations regarding the information considered pursuant to <sup>1</sup>s. 11.910 and make recommendations as described in s. 11.911.

**History.**--s. 9, ch. 2006-146; s. 8, ch. 2007-161.

<sup>1</sup>**Note.**--Substituted by the editors for a reference to s. 11.90 to conform to context. Section 11.90 relates to the Legislative Budget Commission; s. 11.910 relates to information relevant for determination of whether a public need exists for continuation of a state agency.

**11.910 Information for review.**--The committee may consider information submitted pursuant to s. 11.906 as well as any additional information it considers relevant in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of any of the functions of the agency or its advisory committees.

**History.**--s. 10, ch. 2006-146; s. 9, ch. 2007-161.

**11.911 Committee recommendations.**--

(1) In its report on a state agency, the committee shall:

(a) Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees.

(b) Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

(c) Propose legislation necessary to carry out the committee's recommendations under paragraph (a) or paragraph (b).

(2) In its report on a state agency, the joint committee shall:

(a) Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees.

(b) Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

**History.**--s. 11, ch. 2006-146; s. 10, ch. 2007-161.

**11.917 Procedure after termination.**--

(1) Any unobligated and unexpended appropriations of an abolished agency or advisory committee shall revert on the date of abolition.

(2) Except as provided in subsection (4) or as otherwise provided by law, all money in a trust fund of an abolished state agency or advisory committee is transferred to the General Revenue Fund. Any



provision of law dedicating the money to a trust fund of an abolished agency becomes void on the date of abolition.

(3)(a) If not otherwise provided by law, property in the custody of an abolished state agency or advisory committee shall be transferred to the Department of Management Services.

(b) If not otherwise provided by law, records in the custody of an abolished state agency or advisory committee shall be transferred to the Department of State.

(4) The Legislature recognizes the state's continuing obligation to pay bonds and all other financial obligations, including contracts, loans, promissory notes, lease purchase agreements, certificates of participation, installment sales contracts, master equipment financing agreements, and any other form of indebtedness, incurred by the state or any state agency or public entity abolished under ss. 11.910-11.920, and ss. 11.910-11.920 do not impair or impede the payment of bonds and other financial obligations, or any other covenant contained in the legal documents authorizing the issuance of debt or the execution of any other financial obligation in accordance with their terms. If the state or an abolished state agency has outstanding bonds or other outstanding financial obligations, the bonds and all other financial obligations remain valid and enforceable in accordance with their terms and subject to all applicable terms and requirements contained in the legal documents authorizing the issuance of debt or the execution of any other financial obligation. If not otherwise provided by law, the Division of Bond Finance of the State Board of Administration shall carry out all covenants contained in the bonds and in the resolutions authorizing the issuance of bonds, and perform all obligations required thereby. The state or a designated state agency shall provide for the payment of the bonds and all other financial obligations from the sources of payment specified in the resolution or legal documents authorizing the issuance or execution thereof in accordance with the terms of the bonds or other financial obligations, whether from taxes, specified revenues, or otherwise, until the bonds and interest on the bonds are paid in full and all other financial obligations are performed and paid in full. All funds or accounts established by laws or legal documents authorizing the issuance of bonds, or the execution of other financial obligations, shall remain with the previously designated party, agency, or trustee. Any funds or accounts held by an abolished state agency shall be transferred to a designated successor agency or trustee in compliance with the resolution or legal documents applicable to the outstanding bonds or other financial obligations.

**History.**--s. 12, ch. 2006-146.

#### **11.918 Joint Legislative Sunset Committee; powers; assistance of state agencies.--**

(1) The Joint Legislative Sunset Committee may take under investigation any matter within the scope of a sunset review either completed or then being conducted by the joint committee, and, in connection with such investigation, may exercise the powers of subpoena by law and any other powers vested in a standing committee of the Legislature pursuant to s. 11.143.

(2) The joint committee may access or request information and request assistance of state agencies and officers. When assistance is requested, a state agency or officer shall assist the joint committee.

**History.**--s. 13, ch. 2006-146; s. 11, ch. 2007-161.

#### **11.919 Assistance of and access to state agencies.--**

(1) The committee may access or request information and request the assistance of state agencies and officers. When assistance is requested, a state agency or officer shall assist the committee.

(2) In carrying out its functions under ss. 11.901-11.920, the committee or its designated staff member may inspect the records, documents, and files of any state agency.

**History.**--s. 14, ch. 2006-146; s. 12, ch. 2007-161.

**11.920 Saving provision.**--Except as otherwise expressly provided by law, abolition of a state agency does not affect rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the abolition.

**History.**--s. 15, ch. 2006-146.

## Appendix B

## **APPENDIX B**

### **General Professional or Business Regulatory Review Criteria Relating to Consumer Services**

When evaluating whether a specific profession or business sector should be regulated, the following criteria should be considered:

#### **1. NECESSITY OF REGULATION:**

Is the regulation necessary to:

- protect the public from potentially serious threat to its health, safety, and welfare or
- prevent unethical, deceptive and misleading business practices?

Would regulation unduly impede competition by limiting entry into the marketplace, which may increase the cost of services to consumers?

Do the statutes impose specific restrictions or requirements on the business sector to address on consumer issues?

Do these statutes address the civil remedies available to consumers?

From both the business' and consumer's perspective, would regulation by a state agency be more efficient means (rather than through civil actions) to prevent or resolve conflicts between consumers and businesses?

Indicators of necessity may include:

- evidence of harm by non-regulated professions or businesses;
- identification of threat of harm serious enough to warrant regulation, based on:
  - inherent complexity, requiring special skills or expertise;
  - inherent danger in the exercise of the profession or provision of the business service;

Level of consumer complaints (recognizing that effective regulation should result in low levels of consumer complaints; and

Public expectations.

#### **2. LEVEL OF REGULATION**

If regulation is deemed necessary, what is the least restrictive means necessary to protect the public against the identified threat to consumers?

Statutory requirements and restrictions on an activity or business sector.

- If included in ch. 501, F.S., the Attorney General, the Department of Agriculture and Consumer Services, or the states attorneys could be designated as the enforcement entity. As no registration requirement would be imposed, and the corresponding fee, the enforcement entity would bear the costs of enforcement, with possible offsetting penalties.
- Limits or requirements related to civil remedies could be specified.

- Examples of this model include:
  - Florida Deceptive and Unfair Trade Practices Act (FDUPTA, Part II of ch. 501, F.S.);
  - FDUPTA – Motor Vehicle Sales (Part VI, ch. 501, F.S.);
  - Aftermarket Crash Parts Act (s. 501.34, F.S.); and
  - Florida Commercial Weight Loss Practices Act (s 5010581, F.S.).

Registration requires that before an individual be authorized to engage in commercial activity, the individual or business submit verification of specified business information, such as legal organization, proof of insurance and local business tax, and a registration fee. Registration could also require verification of professional certification by a private organization, separate from the regulating entity. *The purpose of registration is to preclude unqualified persons from entering the marketplace, to establish standards to prevent unethical, unfair, deceptive or misleading business practices, and to provide a means for consumers to challenge such practices by businesses and obtain redress without filing a civil action.*

Certification or licensing requires practitioners meet certain minimum qualifications – established by the regulating entity – before they are authorized to perform certain types of highly skilled activities or operate certain types of businesses. Certification or licensing typically requires the individual meet educational and experience requirements, and pass a competency test administered or recognized by the regulating entity. Typically, a peer board sets the regulatory standards and disciplines licensees. *The purpose of certification or licensing is to ensure practitioners or businesses are competent to practice in the profession.*

What is the appropriate level of government to implement this regulation?

State regulation ensures uniformity and standardization (including direct regulatory costs to professionals or businesses), which may promote intra-state activity; or

Regulation by local governments may be sufficient if threat of harm to consumers is limited to one jurisdiction or region.

### 3. ADDITIONAL INFORMATION FOR CONSIDERATION:

The number of individuals or businesses that would be required to be regulated.

The estimated cost to provide the appropriate level of regulation.

Identification of how similar professions or businesses are regulated by other states.

## Appendix C

## **APPENDIX C**

### **Florida Sunrise Act**

#### **11.62 Legislative review of proposed regulation of unregulated functions.--**

- (1) This section may be cited as the "Sunrise Act."
- (2) It is the intent of the Legislature:
  - (a) That no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and
  - (b) That no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.
- (3) In determining whether to regulate a profession or occupation, the Legislature shall consider the following factors:
  - (a) Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
  - (b) Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
  - (c) Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
  - (d) Whether the public is or can be effectively protected by other means; and
  - (e) Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.
- (4) The proponents of legislation that provides for the regulation of a profession or occupation not already expressly subject to state regulation shall provide, upon request, the following information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees to which the legislation is referred:
  - (a) The number of individuals or businesses that would be subject to the regulation;
  - (b) The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
  - (c) Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years;

## Appendix D



THE FLORIDA LEGISLATURE  
*Sunset Review*  
OFFICE OF PROGRAM POLICY ANALYSIS  
& GOVERNMENT ACCOUNTABILITY



## DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES OVERVIEW

April 2007

Report No. S07-01

### ***Agency Responsibilities***

The mission of the Department of Agriculture and Consumer Services (DACCS) is to safeguard the public and support agriculture by

- ensuring the safety and wholesomeness of food and other consumer products;
- improving the production and sale of Florida's agricultural products;
- preserving and protecting the state's agricultural and natural resources; and
- protecting consumers from potential health and security risks and unfair and deceptive business practices.

### ***Agency Organization***

The department primarily accomplishes its mission through five programs.

- **Office of the Commissioner and Administration** provides executive leadership and administrative services to other department programs. It includes the Division of Administration, the Office of Agricultural Emergency Preparedness, the Office of Cabinet Affairs, the Office of Federal-State Relations, the Office of the General Counsel, the Office of the Inspector General, the Office of Legislative Affairs, and the Office of Public Information.
- **Food Safety and Quality** is responsible for ensuring the safety, wholesomeness, quality, and accurate labeling of food. The program includes the Division of Dairy Industry and the Division of Food Safety.

- **Forest and Resource Protection** is responsible for protecting Florida from the dangers of wildfires and for managing the state's forest resources. The program includes the Division of Forestry.
- **Consumer Protection** is responsible for protecting consumers and their property from unlawful, unethical, and unsafe business practices. The program includes the Division of Agricultural Environmental Services, the Division of Consumer Services, and the Division of Standards.
- **Agricultural Economic Development** is responsible for assisting Florida's agricultural industry with the production and marketing of commodities in order to maintain and enhance Florida agriculture in the national and international marketplace. The program includes Agricultural Interdiction Stations, the Division of Animal Industry, the Division of Aquaculture, the Division of Fruit and Vegetables, the Division of Marketing and Development, and the Division of Plant Industry.

The department also houses the Division of Licensing, which is responsible for protecting the public from unethical business practices on the part of persons providing private security, private investigative and recovery services; the Office of Agricultural Water Policy; and the Office of Agricultural Law Enforcement.

For a chart of the department's programs, see Exhibit 1 on page 2.

### ***Agency Resources***

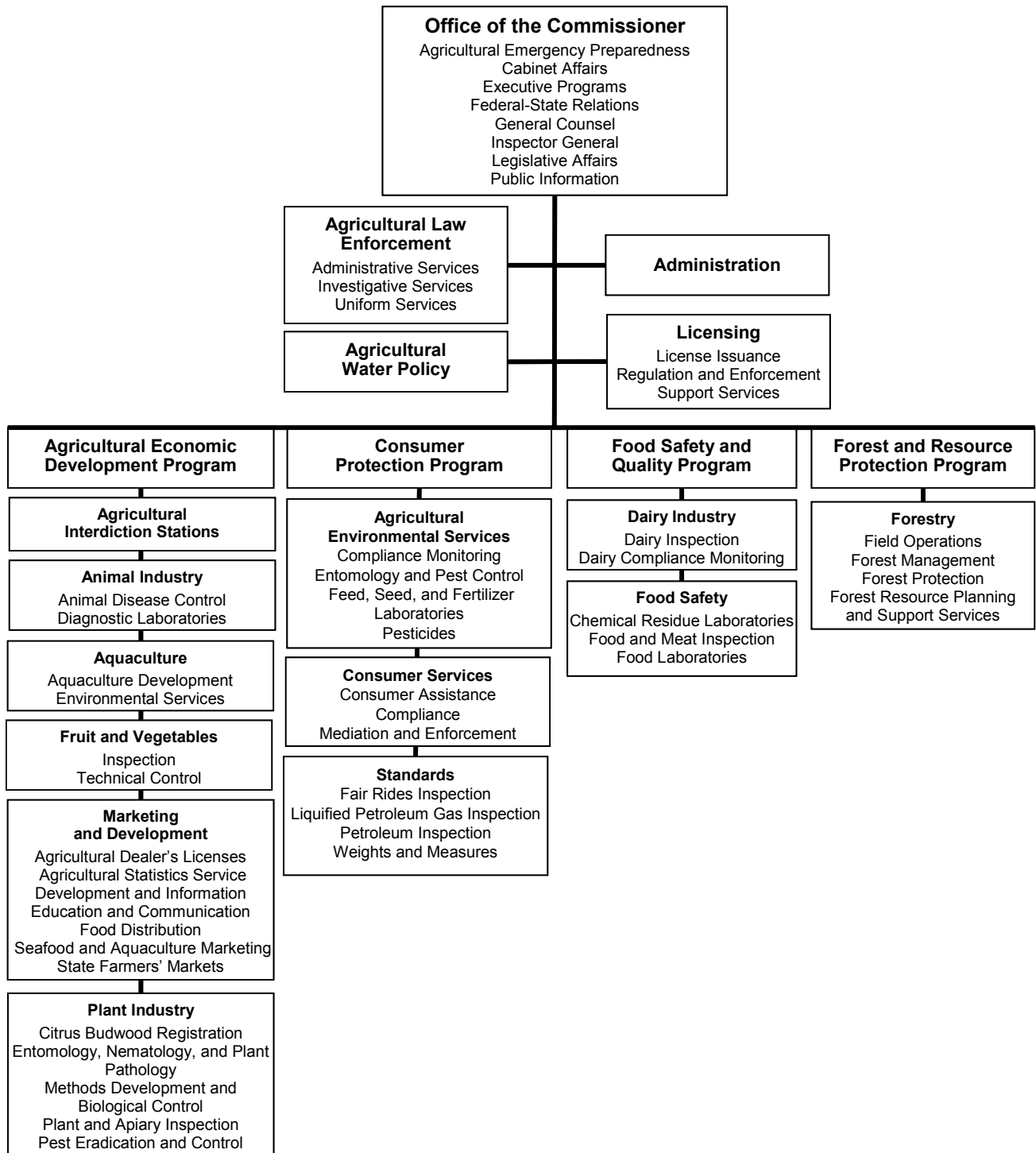
The Legislature appropriated \$408,176,032 and 3,808 positions to the department for Fiscal Year 2006-07. (see Exhibit 2) This represents a 1.13% increase in funding and a slight decrease (.18%) in positions compared to the previous fiscal year.

For more details on the department's resources for Fiscal Year 2006-07, see Exhibit 3.



## Exhibit 1

### The Department of Agriculture and Consumer Services' Programs



Source: OPPAGA analysis.

**Exhibit 2****Legislative Appropriations and Staffing for the Department of Agriculture and Consumer Services**

	FY 2004-05	FY 2005-06	FY 2006-07
General Revenue	\$145,313,136	\$143,083,844	\$147,653,162
Trust Funds	221,214,169	260,481,627	260,522,870
<b>Total Funds</b>	<b>\$366,527,305</b>	<b>\$403,565,471</b>	<b>\$408,176,032</b>
<b>FTE</b>	<b>3,831</b>	<b>3,815</b>	<b>3,808</b>
<b>OPS</b>	<b>1,335</b>	<b>681</b>	<b>735</b>

Source: Legislative Appropriations System/Planning and Budgeting Subsystem (LAS/PBS), August 2006, and Department of Agriculture and Consumer Services' Sunset Review Report, December 2006.

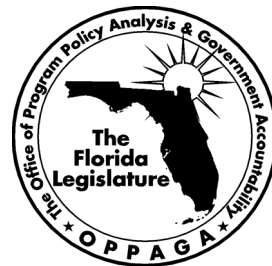
**Exhibit 3****Department of Agriculture and Consumer Services Resources by Program for Fiscal Year 2006-07**

Office of Commissioner and Administration	Federal Funds	State Trust Funds	General Revenue	TOTAL	FTE Positions	OPS Positions
Agricultural Law Enforcement	\$959,930	\$379,709	\$3,775,237	\$5,114,876	40.5	1
Agricultural Water Policy Coordination	1,620,520	21,169,472	500,000	23,289,992	37	0
Executive Direction and Support Services	3,300	6,812,600	8,837,752	15,653,652	192.75	9
Information Technology	0	4,490,694	3,787,351	8,278,045	45	4
Licensing	0	12,386,939	0	12,386,939	139	20
<b>Food Safety and Quality</b>						
Dairy Industry	\$0	\$20,274	\$1,693,367	\$1,713,641	25	0
Food Safety	3,839,168	12,280,486	2,259,175	18,378,829	290	20
<b>Forest and Resource Protection</b>						
Land Management	\$26,530,638	\$32,010,910	\$10,260,218	\$68,801,766	506	81
Wildfire Prevention and Management	8,324,519	11,708,518	48,405,036	68,438,073	769.5	56
<b>Consumer Protection</b>						
Agricultural Environmental Services	\$1,401,638	\$11,361,898	\$4,187,864	\$16,951,400	220	15
Consumer Services	8,518	6,003,720	742,959	6,755,197	126	6
Standards	0	9,703,923	2,230,256	11,934,179	188	4
<b>Agricultural Economic Development</b>						
Agricultural Interdiction Stations	\$330,000	\$204,159	\$15,848,846	\$16,383,005	241	0
Animal Industry	3,426,745	1,109,843	8,609,764	13,146,352	151.50	13
Aquaculture	833,700	1,260,046	6,339,680	8,433,426	52.5	6
Fruit and Vegetables	0	13,277,801	0	13,277,801	222	45
Marketing and Development	5,181,375	23,658,159	10,277,406	39,116,940	195	5
Plant Industry	23,610,355	16,613,313	19,898,251	60,121,919	367	450
<b>TOTAL</b>	<b>\$76,070,406</b>	<b>\$184,452,464</b>	<b>\$147,653,162</b>	<b>\$408,176,032</b>	<b>3,808</b>	<b>735</b>

Source: Legislative Appropriations System/Planning and Budgeting Subsystem (LAS/PBS), August 2006, and Department of Agriculture and Consumer Services' Sunset Review Report, December 2006.

## *The Florida Legislature*

# *Office of Program Policy Analysis and Government Accountability*



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### ***The Florida Government Accountability Act Sunset Reviews***

The 2006 Legislature passed the Florida Government Accountability Act (Ch. 2006-146, *Laws of Florida*) to create a Sunset review process. The act

establishes the process, criteria, and schedule for the Legislature to assess whether state agencies and advisory committees need to continue to exist;

provides for the creation of a Legislative Sunset Advisory Committee and describes the membership and organization of the committee and committee duties;

requires reports and assistance from state agencies and the Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA).

Using these reports and other information, the Sunset Advisory Committee is to produce a report that includes recommendations to abolish, continue, or reorganize an agency or advisory committee under review.

### ***First Year Schedule for Agency Reviews***

Agencies to be reviewed by July 1, 2008:

- (a) Statutorily created responsibilities of the Fish and Wildlife Conservation Commission.
- (b) Department of Agriculture and Consumer Services.
- (c) Department of Citrus, including the Citrus Commission.
- (d) Department of Environmental Protection.
- (e) Department of Highway Safety and Motor Vehicles.
- (f) Water management districts.

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## Appendix E





# The Florida Legislature

## OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



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### SUNSET MEMORANDUM

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## Department of Agriculture and Consumer Services, Consumer Protection Program Options for Legislative Consideration

January 8, 2008

### ***Summary***

To support the Sunset Review process, the Legislature directed OPPAGA to examine the Department of Agriculture and Consumer Services.<sup>1</sup> This memo focuses on the Consumer Protection Program and its purpose, organization, responsibilities, resources, and performance. The memo also offers options for legislative consideration.

OPPAGA developed three options for the Legislature to consider for reducing the Consumer Protection Program's reliance on general revenue funds and making its activities financially self-sufficient. These options include (1) raising or creating fees for regulatory and inspection activities, (2) reducing activities to the level supported by current fees, or (3) reducing the department's role in conducting some inspections. For each option, we describe advantages and disadvantages.

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<sup>1</sup> Sections [11.901](#)-11.920, *F.S.*

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### ***Purpose, Organization, and Responsibilities***

The Consumer Protection Program is responsible for protecting consumers and their property from unlawful, unethical, and unsafe business practices. The program comprises the Division of Consumer Services, the Division of Standards, and the Division of Agricultural Environmental Services.

**The Division of Consumer Services** performs several functions to assist consumers in resolving problems. These functions include

- regulating 11 types of businesses, including pawnbrokers, telemarketers, health studios, intrastate movers, and motor vehicle repair shops;
- implementing, along with the Department of Legal Affairs the Florida New Vehicle Warranty Enforcement Act (commonly known as the Lemon Law);
- serving as the U.S. Consumer Product Safety Commission's agent in Florida for product recalls, inspections, and investigations;
- operating a toll-free consumer assistance call center;
- maintaining "do not call" lists;
- mediating complaints filed by consumers regarding goods and services provided by businesses; and
- processing administrative enforcement actions and investigations for violations by an entity regulated by the division.

**The Division of Standards** regulates several businesses and business activities through its four bureaus.

- The Bureau of Fair Rides Inspection inspects amusement devices at most theme and water parks, as well as at temporary events such as fairs, carnivals and festivals.
- The Bureau of Liquefied Petroleum (LP) Gas Inspection licenses, inspects, and conducts accident investigation for liquefied petroleum gas businesses.
- The Bureau of Petroleum Inspection tests the quality of petroleum, brake fluid, and antifreeze products sold in Florida. The bureau also inspects fuel pumps to ensure that consumers receive the amount of fuel for which they pay.
- The Bureau of Weights and Measures inspects commercial weighing and measuring devices and packaged goods produced and sold in Florida. The bureau also enforces compliance with truth-in-labeling laws for dry goods, building and construction materials, gardening products, and other products.

**The Division of Agricultural Environmental Services** regulates the mosquito and pest control industries and registers, analyzes, and licenses pesticide, feed, seed, and fertilizer products to help ensure the safety of Florida's citizens and ecosystems.

### ***Resources***

The Legislature appropriated \$36,573,502 in general revenue and trust funds and 530 positions to the Consumer Protection Program for Fiscal Year 2007-08 (see Exhibit 1). The program received approximately \$6.6 million (18%) of its funding from general revenue and 82% from trust funds.

## Exhibit 1

### The Legislature Appropriated Approximately \$36.6 Million for the Consumer Protection Program in Fiscal Year 2007-08

Program	General Revenue	Trust Funds	Total Funds	FTEs
Division of Consumer Services	\$ 530,872	\$ 7,010,526	\$ 7,541,398	130
Division of Standards	2,091,449	9,884,209	11,975,658	186
Division of Agricultural Environmental Services	3,957,262	13,099,184	17,056,446	214
<b>Total</b>	<b>\$6,579,583</b>	<b>\$29,993,919</b>	<b>\$36,573,502</b>	<b>530</b>

Source: Chapters 2007-72 and 2007-326, *Laws of Florida*.

Some of the program's major functions rely substantially on general revenue. For example, inspection of weights and measures devices within the Division of Standards receives 83% of its funding or \$2.4 million in general revenue. In addition, the Division of Agricultural Environmental Services' pesticide regulation function receives \$1.7 million in general revenue or approximately 28% of its total budget of \$6.2 million.

## Performance

As shown in Appendix A, the Consumer Protection Program achieved the established standards for 20 of its 26 performance measures in Fiscal Year 2006-07 (the most recent period for which performance data is available). For example,

- 96 % of regulated weighing and measuring devices, packages, and businesses with scanners complied with accuracy standards during initial inspection/testing which met the standard of 96%;
- 99.4% of tested petroleum products met quality standards which exceeded the standard of 99.2%;
- 31% of LP Gas facilities were found to be in compliance with safety requirements on their first inspection which exceeded the standard of 21%;
- 44% of amusement attractions were found to be in full compliance with safety requirements on first inspections which exceeded the standard of 41%; and
- 91.7% of registered pesticide products evaluated and/or managed were found to be in compliance with regulations which exceeded the standard of 91%.

However, the program did not meet the established standard for six performance measures, including the examples below.

- The program did not meet its standard for the percentage of feed, seed and fertilizer inspected products in compliance with performance and quality standards (83.8% versus a standard of 89%). The department explained that this was due to conditions within the fertilizer industry, such as price competition, mergers within the industry, and the inability to obtain quality raw materials, that made it more difficult for the industry to produce quality products.
- The department reported that the program did not meet its standard for the percent of all regulated entities where an investigation found a violation of consumer protection laws (1.87% versus a standard of 4.36%). The department explained that it did not meet this standard because the number of regulated entities rose 12% from Fiscal Year 2005-06 (57,693) to Fiscal Year 2006-07 (65,268) while the number of its investigative staff remained unchanged.

It should be noted that the program's established measures and their associated standards do not always indicate how well it is performing in protecting the public. For example, as shown in Appendix A, the department reported that 31% of liquefied petroleum gas facilities inspected in Fiscal Year 2006-07 were in compliance with safety requirements on first inspection which exceeded the standard of 21% and that 44% of inspected amusement attractions were in full compliance with safety requirements on first inspections which exceeded the standard of 41%. Having standards that assume 79% of the inspected liquefied petroleum gas facilities and 59% of the inspected fair rides will fail initial inspections could be interpreted to mean that the public is at a substantial risk from liquid petroleum gas facilities and fair rides. However, it should be noted that many cited deficiencies are for minor violations that do not pose substantive safety risks, and liquefied petroleum gas facilities found to be in violation cannot be returned to full operation until they pass another inspection and fair rides cannot be used by the public until a violation is corrected. The division should revise its performance measures to better demonstrate how its efforts protect the public. For example, the department could report on the percentage of rides and liquefied petroleum gas facilities that were found to have serious safety defects.

### ***Program Need***

The Consumer Protection Program promotes public health and safety and provides oversight mechanisms to protect consumers. For example, the program's regulation of pesticides helps ensure that these products are used in a manner that protects public health and the environment. The program's regulation of businesses such as pawnbrokers, telemarketers, health studios, intrastate movers, and motor vehicle repair shops enables the department to assist consumers who have disputes with these entities. While eliminating the program would diminish consumer protection, the Legislature could take action to reduce the program's costs and need for general revenue funding as well as to reduce the scope of regulation and place more compliance responsibility on regulated entities, as discussed below.

### ***Options for Consideration***

Section 216.0236, *Florida Statutes*, provides that it is the Legislature's intent that all costs of providing a regulatory service or regulating a profession or business should be supported solely by those who receive the service or who are subject to regulation. The Consumer Protection Program receives sufficient revenue from fees and federal grants to be self-sufficient. For example, in Fiscal Year 2006-07, the program collected \$31.7 million in revenue from fees and grants and expended \$31.4 million in general revenue and trust fund dollars.<sup>2</sup> Although the program generated sufficient revenue to cover its costs, it expended more than \$5.5 million in general revenue funding. Excess revenues from certain programs, such as dance studios, health studios, solicitation of contributions, and petroleum inspection are deposited in the General Inspection Trust Fund and used to support other functions.

The Legislature may wish to consider the following options: (1) raising or creating fees to make programs more self-sufficient, (2) reducing activities to the level supported by current fees, or (3) reducing the department's role in conducting some inspections. Exhibit 5 summarizes these policy options and describes the advantages and disadvantages associated with each option.

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<sup>2</sup> Expenditures do not include federal contracts and grants.

### ***Raise or create fees to make regulatory and inspection functions self-sufficient***

As shown in Appendix B, each of the divisions within the Consumer Protection Program currently collect regulatory fees for various inspections and certifications. Examples of these regulatory fees include an amusement ride permit fee of \$430 paid for each ride; a petroleum distribution and sale inspection fee of \$.00125 per gallon of gas and kerosene; and a feed master registration fee that ranges from \$25 to \$2,500 depending on the tons of feed sold.<sup>3, 4, 5</sup>

However, many of the program's regulatory functions are not self-supported by current fees and portions of some costs are paid for by general revenue (see Appendix B).<sup>6</sup> Consequently, if the Legislature chose to make these functions more self-sufficient, it could increase regulatory fees charged by the program's divisions as described below.

**Division of Consumer Services.** The department reported that six of the division's nine regulatory functions generated sufficient revenue in Fiscal Year 2006-07 to be self-sufficient.<sup>7</sup> However, the Intrastate Moving Company, Pawn Shops, and Sellers of Travel functions did not generate enough fees to be self-sufficient. For example, in Fiscal Year 2006-07 the Intrastate Moving Company Program received \$226,664 in general revenue which comprised 49% of its total budget.<sup>8</sup> Moreover, all of the division's nine functions used general revenue funding to pay a portion of their costs (total of \$256,058 in general revenue).

The Intrastate Moving Company, Pawn Shops, and Sellers of Travel regulatory functions could become self-sufficient if their fees were increased by relatively small amounts (See Exhibit 2). For example, for Fiscal Year 2006-07, the fee charged by the Intrastate Moving Company Program would have needed to be raised from \$300 to \$387.60, the annual licensing fee charged by the Pawn Shop Program would have needed to be raised from \$300 to \$306.23, and the fee for Sellers of Travel would have needed to be raised from \$300 to \$300.04. To do so, the Legislature would need to change or remove the current \$300 statutory caps on the amount of fees charged by these programs.<sup>9</sup> These changes would generate \$111,281 in additional revenue.

### **Exhibit 2**

#### **Relatively Small Fee Increases Could Make the Intrastate Movers, Pawn Shops, and Sellers of Travel Regulatory Functions Self-Sufficient**

Division of Consumer Services	Current Statutory Mandated or Capped Fee	Fees Required for Activity to be Self-Sufficient Based on FY 2006-07 Costs
Intrastate Movers	\$300	\$387.60
Pawn Shops	\$300	\$306.23
Sellers of Travel	\$300	\$300.04

Source: OPPAGA analysis.

<sup>3</sup> Rule. 5F-8.012 *F.A.C.*

<sup>4</sup> Section 525.09 (1), *F.S.*

<sup>5</sup> Section 580.041, *F.S.*

<sup>6</sup> The department reported that it did not receive general revenue funding for the Fair Rides Inspection, Liquefied Petroleum Inspection, or the Petroleum Inspection functions.

<sup>7</sup> These regulatory functions include Interstate Moving Companies, Pawn Shops, Dance Studios, Health Studios, Motor Vehicle Repair Shops, Sellers of Business Opportunities, Sellers of Travel, Solicitation of Contributions, and Telemarketing.

<sup>8</sup> The Intrastate Moving Companies Program's total expenditures for Fiscal Year 2006-07 was \$460,192; \$226,664 was from general revenue.

<sup>9</sup> Estimates as based on the program's expenditures in Fiscal Year 2006-07.

**Division of Standards.** As shown in Appendix B, only one of the Division of Standards four functions, the Petroleum Inspection, generated sufficient revenue from fees in Fiscal Year 2006-07 to be self-sufficient. The Petroleum Inspection revenues generated a surplus of approximately \$4.6 million, which was deposited in the General Inspection Trust Fund. However, the other three functions (Fair Rides Inspection, Liquefied Petroleum Gas Inspection, and Weights and Measures) either did not generate sufficient revenues to cover their costs or did not charge fees. Consequently, the functions were reliant on general revenue. For example, \$2.4 million or 82% of the Weights and Measures function's funding was from general revenue.

To reduce reliance on general revenue and make the division's programs self-sufficient, the Legislature could increase fees for the Fair Ride Inspection and the Liquefied Petroleum Gas Inspection functions. Specifically, to be fully supported by fees, Fair Ride Inspection function's fees could be increased 6.8% function-wide, which would generate an additional \$100,800 in revenue.<sup>10</sup> This would be consistent with s. 616.242 (8)(a), *Florida Statutes*, which requires the department to develop rules establishing fees to cover the costs and expenditures associated with the Bureau of Fair Rides Inspection, including all direct and indirect costs. Similarly, the Liquefied Petroleum Gas inspection fees could be increased by 3.9% function-wide, which would generate an additional \$65,358.<sup>11</sup> See Exhibit 3 for examples of these fee increases. The department has the authority to increase the maximum fees for the Fair Rides Inspection Program as these fees are set by department rule; however, only the Legislature can increase Liquefied Petroleum Gas fees.

The Legislature could also consider requiring the Weights and Measures Program to become self-supporting. The program does not currently charge regulatory fees for many of its activities, including inspecting scales used in commercial transactions.<sup>12</sup> However, some states, such as California, charge annual registration fees to cover the costs of inspecting and testing weighing and measuring devices. For example, California charges a registration fee of \$100 per business location.<sup>13</sup> Creating such fees would require the Legislature to amend current statute to authorize the department to charge regulatory fees.

### Exhibit 3

#### Examples of Small Fee Increases Required to Make the Amusement Rides and Liquefied Petroleum Gas Regulation Functions Self-Sufficient

Division of Standards	Current Statutory Mandated or Capped Fee	Fees Required for Activity to be Self-Sufficient Based on FY 2006-07 Costs
Kiddie Amusement Ride Device Inspection	\$35	\$37.38
Liquefied Petroleum Gas Site Plan	\$200	\$207.80

Source: OPPAGA analysis.

<sup>10</sup> The Fair Rides Inspection function has 11 fees for permits and ride inspections. Fee increases would range from \$.48 to \$34.00.

<sup>11</sup> The Liquefied Petroleum Gas inspection function has more than 30 different fees. Fee increases would range from \$.39 to \$20.47.

<sup>12</sup> In Fiscal Year 2006-07, the Weights and Measures function generated \$63,191 in revenue, which was mostly derived from administrative fines and charges for metrology calibration and testing.

<sup>13</sup> California also charges an additional fee based on business type and scale device capacity, with a limit of \$20 per device and \$1,000 for a single business location (California Code 12240(b) - (n)).

#### Exhibit 4

#### Division of Agricultural Environmental Services' Functions Would Need Significant Fee Increases to Become Self-Sufficient

Division of Agricultural Environmental Services	Current Statutory Mandated or Capped Fee	Fees Required for Activity to be Self-Sufficient Based on FY 2006-07 Costs
Feed Registration 300-600 tons	\$500	\$734.19
Fertilizer Inspection	\$.75 per ton	\$1.05 per ton
Pesticide Dealer	\$250 <sup>1</sup>	\$348.38
Seed Application: Receipts \$20,000-\$40,000	\$500	\$949.11

<sup>1</sup> Current fee is \$160.00

Source: OPPAGA analysis.

**Division of Agricultural Environmental Services.** As shown in Appendix B, none of this division's five regulatory activities (Feed Regulation, Fertilizer Regulation, Pest Control, Pesticide Regulation, and Seed Regulation) generated sufficient fee revenue in Fiscal Year 2006-07 to be self-sufficient and all received general revenue funding. If the Legislature wished to make the Division of Agricultural Environmental Services' regulatory activities more self-sufficient, it could direct the department to raise regulatory fees (See Exhibit 4). Some of these fees have not been adjusted for many years – for example, fees for seed regulation were last adjusted in 1992. As a result, several of the functions would require substantial fee modifications to become self-sufficient. For example, fertilizer inspection would require a 40% across the board increase to generate approximately \$785,000 in additional revenue to eliminate the need for general revenue funding. Requiring all division functions to become self-supporting would eliminate the need for \$2.8 million in general revenue funding.

#### ***Reduce activities to the level supported by current fees***

Another alternative would be for the Legislature to remove general revenue funding from the program and require that it reduce its activities to the level supported by current fees. This would reduce the program's costs by approximately \$6.6 million.

This option would have varying effects on the program's regulatory functions. It would have relatively little effect on those functions that are relatively close to being self-supporting from current fees, but would require substantial reductions in other activities. For example, the petroleum inspection function would not be directly affected as it generates a surplus of regulatory fees, while the weights and measures function would be essentially eliminated as it receives only \$63,000 in revenues compared to its costs of \$2.9 million.

#### ***Reduce the department's role in some inspection activities***

Under this approach, the program would partially privatize its activities and shift its focus in some regulatory functions from directly conducting inspections to overseeing the work of certified private inspectors. The state currently uses this approach for elevator safety inspections. In this approach, rather than conducting inspections with state employees, the department would establish regulatory standards, certify private individuals who possessed required skills and knowledge who would conduct required regulatory field inspections, and it would monitor the work of the certified persons by re-inspecting a sample of regulated entities. The certified private inspectors would charge a fee to the

regulated entity to conduct the inspections. For example, businesses that operate scales or gasoline stations would hire a certified inspector to test these devices for compliance with regulatory standards. This option would reduce the state's direct regulatory role and need for general revenue funding. This option would likely not materially affect consumer protection, as the vast majority of regulated devices are currently found in compliance with state standards (for example, only 0.6% of petroleum products tested were found to have violations in Fiscal Year 2006-07).

The Legislature may also wish to consider the approaches used by states such as Texas to reduce the state's role in performing some regulatory inspections.<sup>14</sup> In Texas, the amusement device industry is responsible for performing ride inspections; the state sets the standards for inspection frequency and liability requirements, ride owners meet the risk requirements specified by their insurers, and private insurers conduct inspections as they deem necessary. This approach could be used in other regulatory areas by requiring regulated businesses to post a surety bond rather than submit to state inspections; the bonding companies would become responsible for policing the industries (such as by refusing to sell a surety bond to an intrastate moving company if customers repeatedly filed claims against the company's bond for poor performance).

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<sup>14</sup> California has delegated authority for inspecting weights and measuring devices to its county governments, who are overseen by state's Division of Measurement Standards. Miami-Dade County currently operates a measures inspection program.



**Exhibit 5**  
**The Legislature Could Consider Several Options for the Consumer Protection Program**

Option	Advantages	Disadvantages
<b>Raise or Create Fees to Make Regulatory and Inspection Functions More Self-Sufficient</b>		
Increase and establish fees to cover all regulatory costs and reduce or eliminate program's current \$6.5 million general revenue subsidy	<ul style="list-style-type: none"> <li>▪ Maintains current level of regulatory activities</li> <li>▪ Would bring program into compliance with legislative intent for regulatory programs to be self-supporting from user fees</li> <li>▪ Costs would be more directly borne by regulated industries rather than taxpayers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Would require statutory change as many current fees are set by law and the Legislature would need to authorize creating additional fees for functions that do not currently charge fees</li> <li>▪ May experience opposition from regulated industries who would pay higher fees</li> </ul>
<b>Reduce Activities to the Level Supported by Current Fees</b>		
Eliminate general revenue funding and reduce activities to the level supported by current fees	<ul style="list-style-type: none"> <li>▪ State would retain regulatory authority</li> <li>▪ Will reduce program costs by \$6.6 million</li> <li>▪ Would not materially affect some functions that are currently self-supporting or close to self-supporting from current fees</li> </ul>	<ul style="list-style-type: none"> <li>▪ Would require substantial reductions in activity levels for some regulatory functions that currently receive large general revenue subsidies, including weights and measures inspection and feed, seed, and fertilizer inspection</li> <li>▪ Reduced regulatory oversight could increase risks to public</li> <li>▪ May be opposed by private industries that currently benefit from regulation while not paying regulatory costs</li> <li>▪ Could jeopardize federal funding for some programs, such as pesticide regulation and pipeline inspections that require general revenue match</li> </ul>
<b>Reduce the Department's Role in Some Inspection Activities</b>		
Shift regulatory model from state inspection to state-certified private inspection and/or reliance on private bonds	<ul style="list-style-type: none"> <li>▪ State would retain regulatory authority</li> <li>▪ Would reduce size of state government and need for general revenue funding by eliminating some inspector positions and associated costs, such as vehicle, equipment and travel.</li> <li>▪ Would place responsibility for compliance with regulatory standards on private sector</li> <li>▪ Would recognize industry changes, such as development of digital scales and gas pumps that are more accurate and thus require less regulatory oversight</li> <li>▪ Could result in lower regulatory costs if private certified inspectors are more efficient than state inspectors</li> </ul>	<ul style="list-style-type: none"> <li>▪ Could increase risks to public if private certified inspectors did not adequately perform inspections</li> <li>▪ Would require phased-in approach to training and certifying inspectors</li> <li>▪ Would increase regulatory costs to private businesses that would pay inspection costs, which are now subsidized by general revenue</li> <li>▪ Could jeopardize federal funding for some functions</li> </ul>

Source: OPPAGA analysis.

## Appendix A

### The Consumer Protection Program Met Standards for 20 of 26 Performance Measures in Fiscal Year 2006-07

In the table below, the program's performance measures that met their standards in Fiscal Year 2006-07 are shown in the shaded rows.

Performance Measure	Fiscal Year 2006-07	
	Actual Performance	Standard
<b>Consumer Services</b>		
Percent of all regulated entities where an investigation found a violation of consumer protection laws	1.87%	4.36%
Number of lemon law assists made to consumers	21,612	26,500
Number of complaints investigated/processed by the Division of Consumer Services	32,771	37,500
Number of no sales solicitation calls processed	102,725	66,545
Number of regulated entities licensed by Division of Consumer Services	65,268	42,130
Number of assists provided to consumers by the call center	469,522	318,350
<b>Standards</b>		
Percent of regulated weighing and measuring devices, packages, and businesses with scanners in compliance with accuracy standards during initial inspection/testing	96%	96%
Percent of LP Gas facilities found in compliance with safety requirements on first inspection	31%	21%
Percent of amusement attractions found in full compliance with safety requirements on first inspections	44%	41%
Percent of petroleum products meeting quality standards	99.4%	99.2%
Number of LP Gas facility inspections and re-inspections conducted	9,670	6,500
Number of petroleum field inspections conducted	269,966	255,000
Number of petroleum tests performed	113,220	110,000
Number of amusement ride safety inspections conducted	10,050	10,000
<b>Agricultural Environmental Services</b>		
Percent of feed, seed and fertilizer inspected products in compliance with performance/quality standards	83.8%	89%
Percent of registered pesticide products evaluated and/or managed that are in compliance with regulations	91.7%	91%
Percent of licensed pest control applicators inspected who are in compliance with regulations	97%	92%
Percent of licensed pesticide applicators inspected who are in compliance with regulations	80%	88%
Number of reported human/equine disease cases caused by mosquitoes	0/13	101/173
Number of pest control, feed, seed, fertilizer, and pesticide inspections conducted	26,039	19,431
Number of people served by mosquito control activities	16,800,806	14,979,291
Number of pesticide products registered	18,839	12,479
Number of pesticide sample determinations made in the pesticide laboratory	92,693	53,462
Number of pest control businesses and applicators licensed	54,773	43,032
Number of fertilizer sample determinations	224,372	175,342
Number of official seed sample determinations performed	53,191	65,513

Source: The Florida Department of Agriculture.

## Appendix B

### The Department's Consumer Services Protection Program Charges a Variety of Regulatory Fees

Each of the divisions within the Consumer Protection Program currently collects regulatory fees for various functions such as inspections and certifications. However, many of these functions are not self-supported by current fees with some costs paid by general revenue. The following table lists the regulatory function areas by division, the sources and amounts of expenditures in Fiscal Year 2006-07, if regulatory fees are at a statutory cap, and the last time these fees were revised.

	General Revenue Expenditures FY 2006-07	General Inspection Trust Fund Expenditures FY 2006-07	Contracts and Grants Trust Fund Expenditures	Total Funding FY 2006-07	Financially Self-Sufficient	Fees at Statutory Cap	Last Revision of Statutory Fees
Consumer Services							
Intrastate Moving Companies	\$226,664	\$233,528	\$0	\$460,172	No	All	2002
Pawn Shops	\$2,738	\$350,082	\$0	\$352,820	No	All	1996
Dance Studios	\$116	\$32,257	\$0	\$32,373	Yes	All	1993
Health Studios	\$1,512	\$226,402	\$0	\$227,914	Yes	All	1993
Motor Vehicle Repair Shops	\$9,712	\$1,241,438	\$0	\$1,251,150	Yes	All	1991
Sellers of Business Opportunities	\$1,565	\$194,108	\$0	\$195,673	Yes	All	1993
Sellers of Travel	\$4,688	\$585,608	\$0	\$590,296	No	All	1991
Solicitation of Contributions	\$7,955	\$1,228,431	\$0	\$1,236,386	Yes	All	1991 1994 <sup>1</sup>
Telemarketing	\$1,128	\$183,118	\$0	\$184,246	No	All	1991
Game Promotions & Sweepstakes	This program was not addressed in the Department's Legislative Budget Request for Fiscal Year 2008-09.						
Lemon Law	This program was not addressed in the Department's Legislative Budget Request for Fiscal Year 2008-09.						
Standards							
Fair Rides Inspection <sup>2</sup>	\$0	\$1,584,012	\$0	\$1,584,012	No	N/A <sup>3</sup>	1993-2005 <sup>4</sup>
Liquefied Petroleum Gas Inspection	\$0	\$1,741,192	\$0	\$1,741,192	No	All	1990-2003 <sup>5</sup>
Petroleum Inspection	\$0	\$7,695,151	\$0	\$7,695,151	Yes	All	1995
Weights & Measures	\$2,403,527	\$492,793	\$0	\$2,896,320	No	No	N/A <sup>6</sup>
Agricultural Environmental Services							
Feed Regulation	\$37,083	\$464,294	\$273,800	\$775,177	No	All	1994
Fertilizer Regulation	\$694,933	\$2,051,620	\$0	\$2,746,553	No	All	1966-1998 <sup>7</sup>
Pest Control	\$69,528	\$3,155,154	\$11,274	\$3,235,956	No	24 of 29	1992
Pesticide Regulation	\$1,722,599	\$3,756,532	\$730,955	\$6,210,086	No	3 of 7	1993-2002 <sup>8</sup>
Seed Regulation	\$336,263	\$628,630	\$0	\$964,893	No	All	1992

<sup>1</sup> Fees for charitable organizations revised in 1991. Fees for professional organizations revised in 1994.

<sup>2</sup> This program is required by law to be self-sufficient.

<sup>3</sup> Fees set by rule, not by statute. Of current fees, 10 of 11 are at the cap set by the department

<sup>4</sup> Eleven fees: 2 set in 1993; 2 set in 1997; 3 set in 2001; 4 set in 2005.

<sup>5</sup> Twenty-two fees: 12 revised in 1990; 3 revised in 1992; 1 revised in 1993; 5 revised in 2000; 1 revised in 2003.

<sup>6</sup> The Bureau of Weights and Measures does not charge regulatory fees.

<sup>7</sup> Five fee categories with variable charges.

<sup>8</sup> Six fees: 1 revised in 1993; 5 revised in 2002.

## Appendix F



# The Florida Legislature

## OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



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### SUNSET MEMORANDUM

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## Department of Agriculture and Consumer Services Advisory Committees

September 11, 2007

### Summary

In response to a request from the Joint Legislative Sunset Committee, we have reviewed the advisory committees of the Florida Department of Agriculture and Consumer Services. We reviewed the department's advisory committees and identified and examined their purposes, activities, and related costs and assessed the need for continuation.<sup>1</sup>

The Department of Agriculture and Consumer Services had 50 advisory committees in Fiscal Year 2006-07 that incurred travel, staff, and other expenses totaling \$220,067. In general, these advisory committees served a public purpose by providing the department with stakeholder input and expertise in a variety of activities, including product marketing and establishment of research and training priorities. One of these committees was established to meet federal requirements and cannot be eliminated without jeopardizing approximately \$1.4 million in federal funds.

The Legislature and the department may wish to consider continuing 48 of the 50 advisory committees because they provide useful citizen input into agency decision making. However, the department should discontinue the Caribbean Fruit Fly Technical Committee and the Exotic Pest of Citrus Council, which have not met in recent years, and their functions could be performed by other entities.

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<sup>1</sup> Included in our review were advisory committees that are defined in ss. [20.03\(3\)](#), (7), (8), (9), (10), and (12), F. S., or were created through executive order.

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Gary R. VanLandingham, Ph.D., Director

## Background

The department's mission is to safeguard the public and support agriculture by

- ensuring the safety and wholesomeness of food and other consumer products;
- improving the production and sale of Florida's agricultural products;
- preserving and protecting the state's agricultural and natural resources; and
- protecting consumers from potential health and security risks and unfair and deceptive business practices.

The department reported having 50 advisory committees.<sup>2</sup> Thirty-one of these committees were established by statute while 19 were created by the department. Collectively, these committees incurred travel, staff, and other expenses totaling \$220,067 in Fiscal Year 2006-07 (see Exhibit 1).

The reported expenses for most of the department's advisory committees are for travel, staff, and other meeting-related expenses. These committees primarily provide technical expertise and input on industry issues or make recommendations to the department on funding research and other activities.

In addition to the advisory committees listed in Exhibit 1, the department reported that it incurred \$9,038 in staff and other meeting related expenses for the Florida Urban Forestry Council during Fiscal Year 2006-07. This council is a non-profit organization that promotes urban forestry practices by educating citizens and forestry professionals. The federal government requires the state to have a designated urban and forestry council as a condition for receiving funding through the Urban and Community Forestry Program. The state receives approximately \$1 million annually in federal program funds that are used to support four department positions, 50% of a research position at the University of Florida, some council operating expenses, and 50/50 matching grants awarded to city and county governments. However, this council was not created by state law or by the Commissioner of Agriculture to assist the department in performing its duties and responsibilities.

See Appendix A for more information on the department's advisory committees.

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<sup>2</sup> The department also reported having one additional organization, the Florida Urban Forestry Council, but we did not include it in the 50 advisory committees because it is a private non-profit organization.

# Department of Agriculture and Consumer Services Advisory Committees

September 11, 2007

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## Exhibit 1

### DACS Reported \$220,067 in Costs for Advisory Committees in Fiscal Year 2006-07

Advisory Committee	Reported Cost
Private Investigation, Recovery, and Security Advisory Council	\$26,850
Pest Control Enforcement Advisory Council	26,685
Coordinating Council on Mosquito Control	24,315
Off Highway Vehicle Committee	15,064
Seed Investigation and Conciliation Council	13,654
Animal Industry Technical Council	13,275
The Emergency Food Assistance Program Advisory Board	7,818
Florida Food and Nutrition Advisory Council	7,265
Soil and Water Conservation Council	6,789
Viticulture Advisory Council	6,149
Pesticide Registration Evaluation Committee	5,977
Motor Vehicle Repair Advisory Council	5,433
Florida Consumer's Council	5,271
Florida Food Safety and Food Defense Advisory Council	5,001
Aquaculture Review Council	4,096
Florida Amusement Device and Attraction Advisory Committee	4,023
Pesticide Review Council	3,786
Florida Citrus Production Research Advisory Council	3,686
Endangered Plant Advisory Council	3,301
Seafood and Aquaculture Advisory Committee	3,227
Florida Forestry Council	3,150
Florida Propane Gas, Education, Safety and Research Council	3,026
Fertilizer Technical Council	2,755
Florida Citrus Health Response Task Force	2,750
Clam Industry Task Force	2,142
Seed Technical Council	2,135
Pest Control Research Advisory Committee	2,026
Florida Alligator Marketing and Education Advisory Committee	1,884
Commercial Feed Technical Council	1,726
FL Center for Wildfire & Forest Resources Management Training Advisory Council	836
Citrus Budwood Technical Advisory Task Force	788
Lettuce Advisory Committee	747
Forest Stewardship Coordinating Committee	644
Community Advisory Council (Board)	577
Aquaculture Interagency Coordinating Council	507
Silviculture Best Management Practices Technical Advisory Committee	489
Noxious Weed Review Committee	452
Honey Bee Technical Council	335
Plant Industry Technical Council	328
Tropical Fruit Advisory Council	300
Peanut Advisory Council	272
Tobacco Advisory Council	214
Florida Liquid Propane Gas Advisory Board	161
Citrus Crop Estimates Advisory Council	158
Transgenic Aquatic Species Task Force	0
Sturgeon Production Working Group	0
Dairy Industry Technical Council	0
Caribbean Fruit Fly Technical Committee	0
Exotic Pest of Citrus Council	0
State Agricultural Advisory Council	0
<b>Total</b>	<b>\$220,067</b>

Source: Department of Agriculture and Consumer Services.

## Assessment

In assessing department advisory committees, we considered various criteria, including whether the committees

- serve a public purpose;<sup>3</sup>
- facilitate public participation in an agency's activities and provide agency staff with stakeholder expertise without duplicating the efforts of other entities;
- are federally mandated; and
- fulfill their public purposes.<sup>4</sup>

We concluded that most of the department's advisory committees serve a public purpose by providing the department with stakeholder input or expertise in a variety of matters. For example, the Pesticide Review Council advises the department regarding the sale, use, and registration of pesticides; the Forest Stewardship Coordinating Committee advises the department in developing operating guidelines for both the forest stewardship and forest legacy programs; and the Florida Citrus Health Response Task Force conducts ongoing reviews of the Citrus Health Response Program to recommend appropriate action to retard the spread of citrus canker.

Further, the Forest Stewardship Coordinating Committee was established to meet the requirements for the state to receive grants through the federal Cooperative Forestry Assistance Act.<sup>5</sup> As this committee is federally mandated, abolishing it could result in the loss of approximately \$1.4 million in federal funds.

However, we recommend that the department consider discontinuing the Exotic Pest of Citrus Council and the Caribbean Fruit Fly Technical Committee.

- The Exotic Pest of Citrus Council was created to review exotic pests of citrus to develop strategic action plans and make recommendations regarding projects to address and mitigate the impact of pests on the citrus industry. The council has been inactive since October 2001.
- The Caribbean Fruit Fly Technical Committee was created to advise the department on the management, control, and suppression of the Caribbean fruit fly. However, the committee did not meet during the past two fiscal years because it did not have issues to address. If this committee was discontinued, its functions, if needed, could be performed by the Florida Citrus Health Response Task Force.

In conclusion, the Legislature and department may wish to consider continuing 48 of the department's 50 advisory committees. Although department staff could implement state policies without these committees, they generally provide useful citizen input into agency decision making and eliminating them would not significantly reduce state costs.

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<sup>3</sup> Section [20.052\(1\)](#), F. S.

<sup>4</sup> Section [20.052\(2\)](#), F. S.

<sup>5</sup> 16 U.S.C. Sections 2101-2111, July 1, 1978, as amended 1990, 1991, 1992, and 1996.



## Appendix A

# The Department Had 50 Advisory Committees in Fiscal Year 2006-07

Advisory committees are listed by division and in order of costs (highest to lowest) incurred in Fiscal Year 2006-07 within each division.

### Administration

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
State Agricultural Advisory Council	Advises and makes recommendations to the department about items, regulations and situations that affect agricultural interests in the state as required by s.570.23, <i>F.S.</i>	Provides input and recommendations to the department to address general issues affecting the agricultural industry. The council did not meet in Fiscal Year 2006-07.	Would eliminate the department's mechanism for obtaining input from the agricultural industry and academic professionals on agricultural issues and concerns.
	There were no reported costs for Fiscal Year 2006-07.		

### Agricultural Environmental Services

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Pest Control Enforcement Advisory Council	Advises the department regarding the regulation of pest control practices and advise other government agencies with responsibilities related to pest control. Authorized by s.482.243, <i>F.S.</i> , the council serves as the statewide forum for the coordination of pest control related activities.	Reviews cases and provides recommendations to the department on pest control enforcement procedures. The council meets four times per year.	Would eliminate industry input into pest control enforcement procedures and reduce coordination between agencies involved in pest control activities.
	The council's reported cost for Fiscal Year 2006-07 was \$26,685.		
Florida Coordinating Council on Mosquito Control	Serves as the statewide forum for the coordination of mosquito control related activities. Advises and assists the state in implementing best management practices, developing outside funding sources and establishing priorities for research as required by s. 388.46, <i>F.S.</i>	Serves as a forum for coordinating and communicating with stakeholders involved in mosquito control. Also informs the department of industry needs, makes recommendations for funding proposals for arthropod control research projects. The council meets three times per year.	Could result in the loss of technical expertise and would reduce coordination between public agencies involved in mosquito control.
	The council's reported cost for Fiscal Year		

Department of Agriculture and Consumer Services Advisory Committees

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2006-07 was \$24,315.			
Seed Investigation and Conciliation Council	As authorized by s.578.27, F.S., assists farmers and agricultural seed dealers in determining the validity of complaints made by farmers against dealers and recommends cost damages resulting from the alleged failure of the seed to produce as represented by the label on the seed package.	The council investigates complaints made by farmers against dealers and makes recommendations of cost damages. The council meets about six times per year.	Would require farmers to file a civil case to resolve complaints against agricultural seed dealers.
The council's reported cost for Fiscal Year 2006-07 was \$13,654.			
Pesticide Registration Evaluation Committee	Reviews certain registration actions and make recommendations to the department concerning the proposed pesticide registration. The committee is authorized by the Pesticide Registration Guidelines, September 1991, as adopted by reference in the <i>Florida Administrative Code</i> .	The committee reviews special local need registrations, experimental use permits, new active permits, new active ingredients, and significant new uses. The committee meets monthly.	Would reduce the coordination of pesticide registration functions between state agencies. Also could make it more difficult and increase the amount of time necessary to register pesticide products.
The committee's reported cost for Fiscal Year 2006-07 was \$5,977.			
Pesticide Review Council	Advises the department regarding the sale, use, and registration of pesticides and advises other government agencies with responsibilities related to pesticides as authorized by s. 487.0615, F.S.	Serves as a statewide forum for the coordination of pesticide related activities. The council meets three to four times per year.	Would reduce opportunities for the industry and the public to provide input on pesticide regulation and other issues. It would also reduce coordination between agencies involved in pest control activities.
The council's reported cost for Fiscal Year 2006-07 was \$3,786.			
Fertilizer Technical Council	Advises the department on technical issues associated with commercial fertilizers as it pertains to best management practices and labeling requirements. Also provides advice on the registration and licensing of individuals who sell and apply commercial fertilizers as authorized by s.576.091, F.S.	Provides technical expertise to the department and makes recommendations regarding statutes and rules. The council meets about once each year.	Could result in the loss of technical expertise and input on fertilizer related issues.
The council's reported cost for Fiscal Year 2006-07 was \$2,755.			
Seed Technical Council	Reviews and makes recommendation to the department on seed related matters. As authorized by s. 578.30, F.S., the council also recommends policies and practices, and submits proposed legislation and rules to the department.	Provides technical expertise to the department regarding the promulgation, administration and enforcement of all laws and rules relating to inspection, regulation and certification. The council meets once per year.	Could result in the loss of technical expertise and input on seed related issues.
The council's reported cost for Fiscal Year 2006-07 was \$2,135.			
Pest Control	Assists the department in establishing research and education priorities, developing	Prioritizes and makes recommendations to the department	Would eliminate education and training opportunities

# Department of Agriculture and Consumer Services Advisory Committees

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Research Advisory Committee	requests for proposals for bids and selecting research and education contractors as authorized by s. 482.2401, F.S.	on research and training projects submitted to assist the pest control industry. The committee meets twice per year.	for the pest control industry.
The committee's reported cost for Fiscal Year 2006-07 was \$2,026.			
Commercial Feed Technical Council	Advises the department on commercial feed and feedstuff as it pertains to the production, distribution, and regulation of commercial feed and feedstuff in Florida as authorized by s.580.151, F.S.	Provides technical expertise and research information to the department and makes recommendations regarding statutes and rules. Also reviews program cost statements, provides input regarding the budget, registration fees. The council usually meets once each year.	Could result in the loss of technical expertise and input on commercial feed related issues.
The council's reported cost for Fiscal Year 2006-07 was \$1,726.			

## Agricultural Water Policy

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Soil and Water Conservation Council	Authorized by s. 582.06, F.S., the council advises and consults with the department on laws, rules and policies relating to soil and water.	Provides recommendations to the department on water quality, land management, invasive species, and agricultural sustainability in Florida. The council meets twice per year.	Would eliminate the primary source of input to the department and other state entities on soil and water related issues.
The council's reported cost for Fiscal Year 2006-07 was \$6,789.			

## Animal Industry

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Animal Industry Technical Council	Authorized by s. 570.38, F.S., the council advises the department regarding animal issues.	Meets with members of animal industries in Florida to discuss concerns and advises the commissioner on animal issues. The council meets four times per year.	The department would use other stakeholder groups to obtain input on these issues.
The council's reported cost for Fiscal Year 2006-07 was \$13,275.			

## Aquaculture

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
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Department of Agriculture and Consumer Services Advisory Committees

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Aquaculture Review Council	Authorized by s. 597.005, <i>F.S.</i> , this council facilitates communication between the aquaculture industry and the department.  The council's reported cost for Fiscal Year 2006-07 was \$4,096.	Provides input to the department and makes recommendations regarding policies regulating the aquaculture industry. Also prioritizes research projects for funding. The council meets four times per year.	Would reduce communication between the department and the aquaculture industry.
Clam Industry Task Force	Provides a forum to discuss issues relevant to the clam industry.  The task force's reported cost for Fiscal Year 2006-07 was \$2,142.	Makes recommendations to the department regarding leasing and other policies. The task force meets four times per year.	Would reduce industry involvement in the development of policies regulating the clam industry.
Aquaculture Interagency Coordinating Council	Provides a forum to discuss issues relevant to the aquaculture industry. Also facilitates communication between state agencies regarding current activities and issues as authorized by s. 597.006, <i>F.S.</i>  The council's reported cost for Fiscal Year 2006-07 was \$507.	Serves as a statewide forum for state agencies to discuss activities conducted and the amount of funds spent to address aquaculture issues. The council meets once per year.	Would eliminate the primary forum for agencies to discuss and address aquaculture industry concerns.
Sturgeon Production Working Group	Promotes the commercial production and stock enhancement of sturgeon as authorized by s. 370.31, <i>F.S.</i>  There were no reported costs for Fiscal Year 2006-07.	Coordinates the implementation of the state sturgeon production management plan. The working group did not meet in Fiscal Year 2006-07.	Would reduce opportunities for the industry to provide input to the department.
Transgenic Aquatic Species Task Force	Advises the department as to whether or not a new transgenic fish, an organism that has genes from a non-related species, will be safe to harvest and sell.  There were no reported costs for Fiscal Year 2006-07.	Provides scientific testing and information to ensure the safety of a new fish. The task force did not meet in Fiscal Year 2006-07.	Would eliminate the state's process for evaluating new fish species and the industry's ability to introduce new species for commercialization.

Consumer Services

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Motor Vehicle Repair Advisory Council	Reviews rules relating to the Motor Vehicle Repair Act as required by s. 559.9221, <i>F.S.</i> Also advises the department on matters relating to educational grants, advancements in industry standards and practices and other issues that require technical expertise of the vehicle repair industry.  The council's reported cost for Fiscal Year	The council provides technical expertise and input to the department on proposed legislation. Also provides advice and recommendations on how to distribute educational grants and other issues. The council meets twice per year.	Would result in the loss of technical expertise and input on issues related to motor vehicle repair.

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2006-07 was \$5,433.			
Florida Consumer's Council	Provides industry input regarding department activities and reviews all proposed legislation related to general consumer issues to provide recommendations to the Legislature as authorized by s. 570.543, F.S.	Advises the department on issues relating to consumer protection and makes recommendations for changes and improvements to the activities of the Division of Consumer Services. Also reviews and makes recommendations for proposed legislation relating to consumer issues. The council meets twice per year.	Would eliminate formal process for the industry to provide input into the activities of the department and legislation proposed to address consumer issues.
	The council's reported cost for Fiscal Year 2006-07 was \$5,271.		

Dairy Industry

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Dairy Industry Technical Council	Authorized by s. 570.42, F.S., the council advises the department on issues and problems relating to the dairy industry.  There were no reported costs for Fiscal Year 2006-07.	Advises the department to resolve issues affecting the dairy industry and provides technical expertise and input for the promulgation of rules. The council did not meet in Fiscal Year 2006-07.	Would result in the loss of technical expertise and input on issues affecting the dairy industry.

Food Safety

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Florida Food Safety and Food Defense Advisory Council	Authorized by s. 500.033, F.S., the council serves as a forum for presenting, investigating, and evaluating issues relating to food safety.  The council's reported cost for Fiscal Year 2006-07 was \$5,001.	Advises the department and proposes recommendation on food safety issues. The council meets twice per year.	Would result in the loss of technical expertise and input on food safety and food defense issues.

Forestry

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
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Department of Agriculture and Consumer Services Advisory Committees

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Off-Highway Vehicle Committee	<p>Authorized by s. 261.04, <i>F.S.</i>, the committee assists the department in developing policies and guidelines for developing recreational sites for users of off-highway vehicles.</p> <p>The committee's reported cost for Fiscal Year 2006-07 was \$15,064.</p>	<p>Ensures broad-based participation in decision making about the use of state funds for developing off-highway vehicle recreational opportunities, and developing related policies such as safety standards. The committee meets four times per year.</p>	<p>Would eliminate public input into decisions regarding off-highway vehicle recreational opportunities.</p>
Florida Forestry Council	<p>Authorized by s. 589.01, <i>F.S.</i>, the council advises the department on all major activities including program development, establishing fee rates, equipment needs and revenue generation practices.</p> <p>The council's reported cost for Fiscal Year 2006-07 was \$3,150.</p>	<p>Ensures the department receives feedback representing multiple areas of interest and expertise including the timber industry, private landowners, and members of conservation groups. The council meets twice per year.</p>	<p>Would result in the loss of technical expertise, as well as public and industry input, on laws and rules related to forestry in Florida.</p>
Florida Center for Wildfire and Forest Resources Management Training Advisory Council	<p>Reviews program curriculum, course content, and scheduling as required by s. 590.02(7)(e), <i>F.S.</i></p> <p>The council's reported cost for Fiscal Year 2006-07 was \$836.</p>	<p>Provides a forum for program managers to hear about the training needs of state agencies and other entities that send staff to training programs. The council meets once per year.</p>	<p>Would require the division to develop a different means for receiving input regarding training needs and on how well the center is meeting those needs.</p>
Forest Stewardship Coordinating Committee	<p>Assists the department in developing operating guidelines for both the forest stewardship and forest legacy programs.</p> <p>The committee's reported cost for Fiscal Year 2006-07 was \$644.</p>	<p>Provides a forum for coordination among the agencies that provide assistance to local communities and private landowners. The committee meets twice per year.</p>	<p>Could result in the loss of federal funds as the committee satisfies the requirements for the state to receive grants through the federal Cooperative Forestry Assistance Act.</p>

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Community Advisory Council	Provides community input into the operations of the Forestry Youth Academy. This council satisfies the community relations standard included in the program's contract with the Department of Juvenile Justice.  The council's reported cost for Fiscal Year 2006-07 was \$577.	Assists the department with gaining resources for its youth program including 1) access to community-based activities and service projects; and 2) job opportunities for youth released from the program. The council meets four times per year.	Would reduce resources for the program. In addition, the department would need to develop another means for meeting the community relations standard in its contract with the Department of Juvenile Justice.
Silviculture Best Management Practices Technical Advisory Committee	Provides guidance and oversight regarding forestry best practices.  The committee's reported cost for Fiscal Year 2006-07 was \$489.	Provides a mechanism for state agencies, forestry industry representatives, private individuals and conservation groups to review the guidance the department is providing to the forestry community and make recommendations for change. The committee meets bi-annually.	Could reduce the credibility of department actions and accountability.

Licensing

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Private Investigation, Recovery, and Security Advisory Council	Advises the department and makes recommendations relative to the regulation of the security, investigative, and recovery industries as required by s. 493.6104, F.S.  The council's reported cost for Fiscal Year 2006-07 was \$26,850.	Provides advice to the Division of Licensing, which ensures improved industry representation in legislation and department priorities. The council meets four times per year.	Would eliminate a forum for communication between the department and representatives of both large and small companies.

Marketing and Development

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Emergency Food Assistance Program Advisory Board	Provides recommendations to the department regarding the administration of Florida's emergency food assistance program.  The board's reported cost for Fiscal Year 2006-07 was \$7,818.	Provides input to the department regarding program administration and makes recommendations to improve the program. The board meets twice per year.	Would eliminate public input into decisions relating to the administration of this program.
Florida Food and Nutrition	Provides information and recommendations to the Commissioners of Agriculture and Education about food and nutrition programs provided by the state and U.S.	Provides expertise about best nutrition practices to the state. The council's involvement has lead to healthier food options in public	Would result in the loss of technical expertise and input regarding best nutrition practices.

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Advisory Council	<p>Department of Agriculture.</p> <p>The council's reported cost for Fiscal Year 2006-07 was \$7,265.</p>	<p>schools. The council meets twice per year.</p>	
Viticulture Advisory Council	<p>Authorized by s. 599.002, F.S., the council provides a forum for the industry to provide input and information to the department to encourage growth of the wine and grape industries.</p> <p>The council's reported cost for Fiscal Year 2006-07 was \$6,149.</p>	<p>Assists the department with the preparation of the State Viticulture Plan. The council also makes recommendations for funding research, promotion, and education projects. The council meets once every two years.</p>	<p>Would eliminate a forum for the industry to provide recommendations for department research and marketing activities.</p>
Florida Citrus Production Research Advisory Council	<p>As required by s. 573.112, F.S., advises the department on the administration of the citrus marketing order.</p> <p>The council's reported cost for Fiscal Year 2006-07 was \$3,686.</p>	<p>Makes recommendations to the department for funding citrus marketing, research, promotions, and advertising projects. The council meets three times per year.</p>	<p>Would eliminate a forum for communication between citrus growers and the research community regarding industry concerns.</p>
Seafood and Aquaculture Advisory Committee	<p>Makes recommendations regarding educational and marketing activities that will benefit Florida's seafood and aquaculture industries.</p> <p>The committee's reported cost for Fiscal Year 2006-07 was \$3,227.</p>	<p>Advises on promotional activities for the seafood and aquaculture industries along with educational activities for consumers. The committee meets about twice per year.</p>	<p>Would result in the loss of technical expertise needed to successfully conduct its aquaculture marketing activities.</p>
Florida Alligator Marketing and Education Advisory Committee	<p>Educates the public and industry about the American alligator and the uses and potential uses of its meat, leather, and by-products.</p> <p>The committee's reported cost for Fiscal Year 2006-07 was \$1,884.</p>	<p>Markets and educates the general public, manufacturers and restaurants about the products of the alligator industry and their uses. The committee meets four times per year.</p>	<p>Would eliminate the primary forum for communication between the industry and state regarding alligator products.</p>
Tropical Fruit Advisory Council	<p>Provides assistance, review, and recommendations to the department for drafting the South Florida Tropical Fruit Plan as required by s. 603.203, F.S.</p> <p>The council's reported cost for Fiscal Year 2006-07 was \$300.</p>	<p>Discusses issues relevant to the tropical fruit industry and informs the department of products for which marketing assistance is needed. The council meets monthly.</p>	<p>Would reduce technical expertise and input to the department on tropical fruit issues.</p>
Peanut Advisory Council	<p>Advises the department on the administration of the peanut marketing order as required by s. 573.112, F.S.</p> <p>The council's reported cost for Fiscal Year 2006-07 was \$272.</p>	<p>Makes recommendations to the department for funding research projects to address industry needs and recommends advertising campaigns to help increase sales and encourage growth of the market. The council meets once per year.</p>	<p>Would eliminate the primary forum for communication between peanut growers and the research and advertising communities.</p>



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Tobacco Advisory Council	Authorized by s. 573.112, F.S., the council provides the department with recommendations for tobacco marketing, research, promotions, and advertising.  The council's reported cost for Fiscal Year 2006-07 was \$214.	Prioritizes research projects and determines the tobacco tax rate. Also coordinates the levying of the tobacco tax in order to generate revenue to fund tobacco research projects. The council meets once per year.	Would eliminate the primary forum for communication between tobacco growers and the research community.
Citrus Crop Estimates Advisory Committee	Makes recommendations for the Florida Agricultural Statistics Service.  The committee's reported cost for Fiscal Year 2006-07 was \$158.	Provides feedback to the Florida Agricultural Statistics Service. The committee meets once per year.	Would make it difficult to make changes in the data supplied and to determine the data needs of users.

Plant Industry

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Endangered Plant Advisory Council	Advises and makes recommendations to the department concerning the protection of endangered flora located in Florida as authorized in s. 581.186, F.S.  The council's reported cost for Fiscal Year 2006-07 was \$3,301.	Provides a standard list of endangered plants and coordinates the use of grant money received through Conservation and Recreation Lands Trust Fund. The council meets once or twice per year.	Would reduce public input on decisions regarding plants to include on the endangered, threatened or commercially exploited list.
Florida Citrus Health Response Task Force	Conducts reviews of the Citrus Health Response Program to recommend appropriate action to retard the spread of citrus canker in Florida.  The task force's reported cost for Fiscal Year 2006-07 was \$2,750.	Makes recommendations to the department on how to respond to threats and issues related to citrus health. The task force meets three times per year.	Would require a similar group be created to discuss responses to citrus health threats.
Citrus Budwood Technical Advisory Task Force	Provides technical oversight on the introduction, screening and release of new citrus budwood varieties.  The task force's reported cost for Fiscal Year 2006-07 was \$788.	Advises the department in deciding which new varieties of citrus to test. The task force meets once or twice per year.	Would result in the loss of technical expertise and input for determining which new citrus varieties should be tested.
Lettuce Advisory Committee	Makes recommendations to the department regarding the proper cultivation of lettuce to prevent the spread of lettuce mosaic virus and other diseases and pests.  The committee's reported cost for Fiscal Year 2006-07 was \$747.	Advises the department on steps needed to address lettuce health issues and determines the diseases for which lettuce should be tested. The committee meets once per year.	Would result in the loss of industry input on lettuce regulation.
Noxious Weed	Assists the department in reviewing the official state list of noxious weeds and	Maintains a list of weeds that cannot be sold by growers. The committee	Would result in the loss of statewide coordination on noxious weeds issues and

Department of Agriculture and Consumer Services Advisory Committees

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Review Committee	invasive plants.  The committee's reported cost for Fiscal Year 2006-07 was \$452.	meets about once per year.	may lead to individual jurisdictions developing localized policies that differ throughout state.
Honey Bee Technical Council	Authorized by s. 586.161, F.S., the council provides consideration and study of the entire field of beekeeping. Also advises and makes recommendations to the department regarding statutes, rules, and policies affecting Florida's Honey Bee industry.  The council's reported cost for Fiscal Year 2006-07 was \$335.	Advises the department on honey bee regulation and makes recommendations for research. The council meets twice per year.	Would result in the loss of technical expertise and input on issues related to honey bee regulation.
Plant Industry Technical Council	Authorized by s. 570.34, F.S., the council advises and makes recommendations on the promulgation, administration, and enforcement of all laws, rules, and regulations relating to the plant industry.  The council's reported cost for Fiscal Year 2006-07 was \$328.	Provides general advice and guidance to the Division of Plant Industry – not industry-specific. The council meets once per year.	Would result in the loss of technical expertise and input on plant issues. The department would create another general stakeholder group when general input was needed.
Caribbean Fruit Fly Technical Committee	Advises the department on the management, control, and suppression of the Caribbean Fruit Fly as it relates to the certification of Florida host materials.  There were no reported costs for Fiscal Year 2006-07.	Investigates and makes recommendations regarding research needs related to the management of pests. This committee did not meet in Fiscal Years 2005-06 and 2006-07 due to a lack of fruit fly-related issues.	Functions could be performed as needed by the Florida Citrus Health Response Task Force. The committee is most important for the sale of citrus to Japan.
Exotic Pest of Citrus Council	Reviews exotic pests of citrus to develop strategic action plans and make recommendations regarding projects to address and mitigate the potentially adverse impact of pests on the citrus industry and ornamental resources.  There were no reported costs for Fiscal Year 2006-07.	Develops strategic action plans to address pests which threaten the citrus industry. The council has been inactive since 2001.	Council has not met since October 2001. Its functions could be assumed by the Florida Citrus Health Response Task Force.

Standards

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
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Florida Amusement Device and Attraction Advisory Committee	<p>Advises the department on patron and ride safety issues, ride inspections, ride equipment, industry concerns, and other current matters, in support of the department's amusement ride inspection program.</p> <p>The committee's reported cost for Fiscal Year 2006-07 was \$4,023.</p>	<p>Provides technical expertise to the department and provides an opportunity for industry input on issues related to amusement ride inspection regulation. The committee meets twice per year.</p>	<p>Would result in the loss of technical expertise and the opportunity for industry input on issues related to the regulation of amusement rides. May increase the use of administrative hearings to resolve challenges to regulatory actions taken by the department.</p>
Florida Propane Gas Education, Safety, and Research Council	<p>Conducts research to address industry problems and provide recommendations and policy options to the department. Authorized by s. 527.22, F.S., the council also provides education and training for consumers and members of the industry.</p> <p>The council's reported cost for Fiscal Year 2006-07 was \$3,026.</p>	<p>The council prepares an annual budget and business plan of marketing, education and research projects for implementation. The council also recommends the assessment rate necessary for the industry to fund these projects. The council meets four times per year.</p>	<p>Would eliminate training opportunities for the propane gas industry and reduce consumer safety and education activities.</p>
Florida Liquid Propane Gas Advisory Board	<p>Provides input to the department on matters relating to the regulation of liquid propane gas.</p> <p>The board's reported cost for Fiscal Year 2006-07 was \$161.</p>	<p>Provides technical expertise and input to the department on regulatory policies and procedures affecting the liquid propane gas industry. The board meets once per year.</p>	<p>Would result in the loss of technical expertise and input to the department on the regulation of liquid propane.</p>

Source: OPPAGA review of the *Florida Statutes* and information from the Department of Agriculture and Consumer Services.

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## Appendix G

THE FLORIDA LEGISLATURE  
*Sunset Review*  
OFFICE OF PROGRAM POLICY ANALYSIS  
& GOVERNMENT ACCOUNTABILITY



June 2007

Report No. SO7-07

**Key Legislative Contacts**

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**Florida Government  
Accountability Act  
Sunset Reviews**

The act establishes the process, criteria, and schedule for the Legislature to assess whether state agencies and advisory committees need to continue to exist.

The following agencies are on the first year schedule for Sunset Reviews to be conducted by July 1, 2008

- Fish and Wildlife Conservation Commission
- Department of Agriculture and Consumer Services
- Department of Citrus, including the Citrus Commission
- Department of Environmental Protection
- Department of Highway Safety and Motor Vehicles
- Water Management Districts

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## OPPAGA Reports on the Department of Agriculture and Consumer Services - 2000-2007

### 2006

***Florida's System for Handling Consumer Complaints Could Be Improved***, Report No. 06-51, June 2006. Most state agencies receive consumer complaints and have developed generally consistent mechanisms to help consumers resolve these complaints. In addition, two agencies—the Department of Agriculture and Consumer Services and the Office of the Attorney General—have a broader role, handling complaints against entities not regulated by the state, violations of Government in the Sunshine Laws, and economic crimes. However, comprehensive, enterprise-wide information about the consumer complaint services provided by agencies is not centrally collected and reported to policymakers.

Florida law requires agencies to coordinate with each other through a statutorily mandated referral process to ensure that state government is responsive to consumers. Although agencies engage in some informal coordination, they often do not implement all provisions of the consumer services laws.

The state's consumer complaint resolution process could be improved by increasing communication among agencies, providing the Legislature with more comprehensive information about

agencies' complaint-related activities, and reducing duplication.

2004

**Consumer Protection Program Increases Some Fees; Some Revenue and Efficiency Opportunities Remain,** Report No. 04-29, March 2004. As we recommended in our November 2001 review of the Consumer Protection Program, the Department of Agriculture and Consumer Services and

the Legislature modified fees to better cover program costs. However, program-generated revenues still do not cover all of the costs for regulating pesticides and weighing and measuring devices.

The department is implementing risk-based inspections for weighing and measuring devices and periodically examines whether regulation of small businesses continues to benefit the public. The Legislature authorized risk-based inspections for certain fair rides.

The department evaluated but did not implement four-day workweeks for

program inspectors, outsourcing of the consumer services telephone call center, and outsourcing of fair ride inspections. A rider misbehavior law was not enacted and administration of the Lemon Law was not consolidated within the Department of Legal Affairs.

**Program Improves Measurement and Interdiction Activities; Still Supports the State Fair and Dependent Markets,** Report No. 04-28, March 2004. The Agricultural Economic Development Program has increased contributions to its marketing efforts, taken steps to reduce operating

losses at the farmers' markets, and ended the reassignment of agricultural interdiction staff to special duties. The department has also discontinued some direct services to the Florida State Fair, and improved its ability to determine the return on investment for its marketing programs.

However, the department needs to take further steps to improve the profitability of some farmers' markets and continue to reduce direct support for the Florida State Fair.

## 2003

***Food Safety Program Increases Some Fees; Still Requires Funding From Other Sources,*** Report No. 03-57, October 2003. The Department of Agriculture and Consumer Services implemented some recommendations made in our November 2001 review of the Food Safety and Quality Program, which enabled the Division of Food Safety to move closer to self-sufficiency than in previous years.

However, program regulatory fees have not been increased to levels that fully support costs. Program revenues for the Division of Food Safety and the Division of Dairy Industry will be an estimated \$3.9 million short of covering expenses during Fiscal Year 2003-04. This shortfall will be subsidized by general revenue and other department programs. To eliminate this subsidy, the Legislature would need to revise statutes to authorize the program to charge sufficient fees to cover costs. Also, the department has not implemented our recommendations to discontinue inspecting a dairy located in Spain that is exporting commodities to Florida.

***Forestry Program Could Achieve Savings by Implementing OPPAGA Recommendations,*** Report No. 03-43, August 2003. The Department of Agriculture and Consumer Services has not implemented the recommendations made in our August 2001 review of the Forest and Resource Protection Program. We again recommend that the department

- allow local land managers more discretion over local recreation fees. The program could generate an estimated \$750,000 annually in additional recreation activity fees by implementing a system currently used by the U.S. Forest Service, which provides local forest managers greater autonomy over recreation fee levels and allows the managers to retain a portion of the fees to meet local needs. A U.S. General Accounting Office study found that

the system increases revenues without affecting public use of the lands.

- direct private forestland owners to use the federally funded Forest Stewardship Program to create land management plans rather than continuing to provide these services with state general revenue funds. This could save Florida's taxpayers over \$1 million annually..

The Legislature could help improve privately owned forestland management practices and reduce program costs by modifying the county fire protection assessment, which has remained unchanged since 1935. Implementation of our recommendation to selectively raise the fire protection assessment from \$0.03 to \$0.10 would initially increase fee collections by \$1.2 million annually. As more forest landowners receive certification, the amount collected will decrease.

## 2002

***New Security Rules Have Minimal Cost Impact on Aerial Application Industry,*** Report No. 02-64, December 2002. Subsequent to the September 2001 terrorist attacks, the Florida Legislature required the Department of Agriculture and Consumer Services to adopt rules increasing security over agricultural and mosquito control aircraft and the chemicals stored for application by these aircraft. Some agricultural applicators reported they experienced no new costs as a result of these requirements, while some reported costs up to \$3,000 for fences, sheds, and aircraft locks. Most mosquito control applicators reported that they meet requirements with existing security.

## 2001

***Agricultural Development Program Met Standards, But Activities Should Become Financially Self-Supporting,*** Report No. 01-60, November 2001. The Agricultural Economic Development Program has met or exceeded most of the legislative performance standards in Fiscal Years 1999-00 and 2000-01.

The state farmers' markets system could improve its effectiveness and become self-sufficient by closing and/or combining several markets and implementing planned efficiency measures.

The Florida State Fair Authority should assume full responsibility for operating the Florida State Fair, which would eliminate the need for the department to provide approximately \$134,000 in support services.

## **PAGE 4**

Alternatives for disposing of the state-owned fairgrounds will also need to be considered.

The program should increase the number of inbound agricultural shipments that are inspected, which would assist in the collection of additional tax revenues, by reducing the practice of diverting manpower from agricultural inspection stations to perform other assignments.



Developing an annual marketing plan and identifying the financial impact of major marketing campaigns can improve the program's economic development activities.

***Some Funding Shifts Are Possible for the State's Food Safety and Quality Program***, Report No. 01-53, November 2001. The Food Safety and Quality Program provides a public health benefit and should be continued and is properly placed in the Department of Agriculture and Consumer Services. The program has generally met its performance standards related to dairy and food safety, although it did not meet its workload standards for pesticide residue analyses and grading poultry and eggs due to workload changes.

To reduce costs, the department should stop inspecting a dairy located in Spain that is exporting dairy commodities to Florida, as this function is the responsibility of the U.S. Food and Drug Administration.

The Legislature and the department could reduce the program's general revenue funding needs by up to \$5.4 million and contribute to covering the department's overhead costs by increasing regulatory fees to levels that fully support the program's direct and indirect costs.

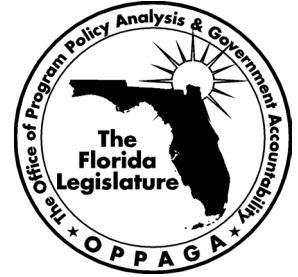
***General Revenue Savings Possible in Consumer Protection Program***, Report No. 01-51, November 2001. The Consumer Protection Program is beneficial to the state and should be continued. However, the Legislature and the department could reduce the need for general revenue and trust funds by \$4.8 million and improve program efficiency by increasing regulatory fees to levels that fully support program costs; allowing program inspectors to work four-day workweeks to reduce travel costs; implementing risk-based inspection methods for fair rides and weights and measures inspections to improve efficiency, and enacting rider misbehavior provisions to reduce fair ride accidents; privatizing the operation of the consumer services telephone call center and fair ride inspections; consolidating administration of the Lemon Law within the Department of Legal Affairs; and assess whether the program's regulation of small industries continues to provide a public benefit.

***Forest Protection Program Meets Most Standards; Could Achieve Further Savings***, Report No. 01-36, August 2001. The Forest and Resource Protection Program is beneficial to the state and should be continued. The program met most of its performance standards for wildfire protection and land management and is accomplishing its mission in an effective manner.

The program could save over \$1 million annually by eliminating some services that it provides to private landowners that are available from the private sector. The program could also generate an additional \$750,000 annually from recreation activity fees by providing local state forest managers greater autonomy. By modifying the county fire protection assessment law, the Legislature could help improve privately owned forestland management practices and reduce program costs.

# *The Florida Legislature*

## *Office of Program Policy Analysis and Government Accountability*



### **Where does OPPAGA get its work?**

- Presiding officers
- Legislation or Proviso in the General Appropriations Act
- Legislative Auditing Committee
- Member requests approved by presiding officers

### **What does OPPAGA provide?**

- **Research memoranda** answer specific issues or questions for leadership, members, or committees; these papers provide a non-public forum to fine-tune ideas as they are confidential to the requesting member and his or her presiding officer. In Fiscal Year 2005-06 OPPAGA issued 100 research assistance memoranda.
- **Reports** deliver program evaluation, policy analysis, and justification reviews of state programs to assist members with overseeing government operations and developing policy choices. Progress reports inform the Legislature whether agencies have corrected identified problems. In Fiscal Year 2005-06, OPPAGA issued 77 reports and made 53 presentations to legislative committees on these reports.
- **Florida Government Accountability Report (FGAR)** offers descriptive, evaluative, and performance information about more than 200 state programs. This nationally unique, award-winning encyclopedia of state government is available on-line and in print for all members' capitol and district offices.
- **The Florida Monitor Weekly** provides summaries and links to new reports and articles of interest to Florida policy makers through a weekly electronic newsletter.

## Appendix H



# AUDITOR GENERAL

DAVID W. MARTIN, CPA



## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### CONCEALED WEAPONS LICENSING AND

### PRIOR AUDIT FOLLOW-UP

#### Operational Audit

#### SUMMARY

This operational audit, for the period March 1, 2005, through February 28, 2007, and selected actions taken through June 30, 2007, focused on the Department of Agriculture and Consumer Services' administration of the State's concealed weapons and firearms licensing program. Our audit also included a follow-up on prior audit findings contained in audit report Nos. 2006-029 (contract management procedures and practices) and 2006-051 (Department inspection programs). Our audit disclosed:

**Finding No. 1:** For fiscal years 2005-06 and 2006-07, the Department's legislatively-approved performance measures and standards required that 90 percent of license revocations or suspensions be initiated within 20 days after receipt of disqualifying information. Audit tests disclosed that Department staff did not accurately record the date upon which reports of disqualifying events or conditions were received.

**Finding No. 2:** Upon receipt of information concerning disqualifying events or conditions, the Department did not always timely initiate administrative actions to suspend, revoke, or deny licenses. Additionally, we noted that the Department did not always timely initiate application suspensions.

**Finding No. 3:** The Department sometimes sent unnecessary correspondence to concealed weapon and firearm licensees and error or omission letters which did not properly reflect actual deficiencies in the applications received.

**Finding No. 4:** The Department, in consultation with FDLE, should consider developing a methodology that would allow the efficient use of outstanding warrant information to identify licensees and applicants who are awaiting disposition of formal charges relating to a disqualifying crime. To fully evaluate the cost-effectiveness of the use of warrant information, the Department should initially approach using the information through a pilot project.

**Prior Audit Findings:** The Department has taken adequate corrective actions for findings included in audit report Nos. 2006-029 and 2006-051.

#### BACKGROUND

The Department of Agriculture and Consumer Services (Department), under Florida law,<sup>1</sup> is authorized to issue to qualified persons licenses to carry concealed weapons or firearms for a period of five years. The Department's statutory responsibilities are carried out by the Division of Licensing and specify, among other things, when and under what conditions the Department shall issue, deny, suspend, or revoke a license.

Individuals issued concealed weapon or firearm licenses may carry, for lawful self-defense purposes, a firearm (handgun) or weapon (electronic weapon or device, tear gas gun, knife, or billie) in such a manner as to conceal the firearm or weapon from the ordinary sight of another person. Section 790.06, Florida

<sup>1</sup> Section 790.06(1), Florida Statutes.

Statutes, stipulates the criteria that an individual must meet before the Department may grant licensure. For example, an individual must not have been convicted of a felony and must demonstrate competency with a firearm by completing one of several designated firearms safety or training courses.

As of June 30, 2007, 438,864 persons were licensed to carry a concealed weapon or firearm in Florida. For fiscal year 2005-06, the Department issued 56,788 new concealed weapons and firearms licenses, which represented a 44.6 percent increase from the 39,269 new licenses issued for fiscal year 2004-05. The increase in licenses issued resulted in a corresponding increase in revenue as concealed weapons-related receipts rose 43.5 percent over the same period from just over \$3 million to over \$4.4 million. Department staffing levels remained constant during this period of increased licensing activity.

As shown below in Table 1, for three key legislatively-approved performance measures, the Department reported the following:

**Table 1**  
**Division of Licensing**  
**Performance Measure Compliance**

Approved Performance Measure	Approved FY 2005-06 Standard	Reported Actual FY 2005-06 Performance
Percent of license <sup>2</sup> revocations or suspensions initiated within 20 days after receipt of disqualifying information	90%	91%
Percent/number of concealed weapon/firearm licenses issued within 90-day statutory timeframe without fingerprint results	5%/1,200	1.8%/1,040
Number of default concealed weapon/firearm licensees with prior criminal histories	200	76

Source: Department Long Range Plan, FY 2007-2008 through 2011-2012.

Our audit found that while the Department's administration of the State's concealed weapons and firearms licensing program was effective in certain operational respects and in meeting its statutory responsibilities, improvements could be made in the reliability of certain performance measure data and in the timeliness of the actions taken to suspend and

revoke licenses upon receipt of disqualifying information. Additionally, we found that improvements could be made to some Department processes.

## FINDINGS AND RECOMMENDATIONS

### Finding No. 1: Data Accuracy

The Department's statutory responsibility to ensure that concealed weapon or firearm licenses are held only by individuals who meet the statutory qualifications necessitates that the Department accurately capture, monitor, and act on data related to events or conditions that under Florida law<sup>3</sup> may lead to the suspension or revocation of a concealed weapon or firearm license. For fiscal years 2005-06 and 2006-07, the Department's legislatively-approved performance measures and standards required that 90 percent of license revocations or suspensions be initiated within 20 days after receipt of disqualifying information.

As part of its effort to ensure that licenses are held only by statutorily qualified persons, the Department generates several "match reports" which detail for concealed weapons licensees, potential disqualifying events or conditions. The match reports include:

- A daily Domestic Violence Injunction (DVI) match report from data provided by the Florida Department of Law Enforcement (FDLE). The Department matches DVI information provided by FDLE to its database of concealed weapons licensees using several criteria to match disqualifying events to licensees.
- A weekly FDLE report which matches disqualifying criminal activity to the Department's database of concealed weapons licensees.
- A monthly Department of Corrections (DOC) report which matches a DOC offense file to the Department's database of concealed weapons licensees.
- A monthly Department of Highway Safety Motor Vehicles (DHSMV) report which matches DHSMV criminal and declaration of

<sup>2</sup>Includes concealed weapon, private investigator, security officer, and recovery agent licenses.

<sup>3</sup> Section 790.06, Florida Statutes.

incompetency information to the Department's database of concealed weapons licensees.

The receipt of disqualifying information triggers the start of the performance measure clock, giving the Department 20 days to initiate either suspension or revocation of a license.

The Department reported for the Division of Licensing, relative to all license types, 91 percent compliance with the 20-day performance standard for fiscal year 2005-06. However, relative to concealed weapons licenses, our tests disclosed that Department staff did not always accurately record in the licensing system, the date upon which disqualifying information was received. We examined 36 cases for which the Department reported the timely initiation of the processing of license suspensions and revocations and found that the date disqualifying criminal information was received was incorrectly recorded in 16 (approximately 44 percent) of the instances. The Department confirmed that for these cases, it recorded in its licensing system a receipt date ranging from 14 to 100 days later than the actual match report receipt date. Consequently, in these instances, the Department significantly understated the amount of time involved in initiating license suspensions and revocations.

Absent accurate data and its impact on Department management's ability to reliably gauge the timeliness of license suspensions and revocations, the public has less assurance that concealed weapon and firearm licenses are held only by individuals who meet the statutory qualifications. Further, given the data accuracy concerns noted above, the reported levels of Department compliance with the 20-day performance standard may be overstated and the Legislature's ability to accurately assess operational performance impaired.

**Recommendation:** To improve the reliability of Department data related to the timeliness of concealed weapon and firearm license suspensions and revocations, match report dates should be accurately recorded. Department management should also periodically monitor staff compliance with Department procedures

**requiring the accurate recording of the date match reports are received.**

### **Finding No. 2: Timeliness of Initiating Administrative Actions**

Florida law<sup>4</sup> provides the circumstances under which the Department shall deny, revoke, or suspend a concealed weapon or firearm license and when the processing of a license application shall be suspended.

Our audit disclosed that contrary to the Department's legislatively-approved performance standard, the Department did not always initiate<sup>5</sup> administrative actions<sup>6</sup> within 20 days after receipt of disqualifying information. As shown by Table 2 below, our audit tests disclosed that in 8 out of 34 instances (approximately 24 percent) tested, administrative actions were not initiated within 20 days after receipt of disqualifying information.

**Table 2**  
**Administrative Actions Examined**

Administrative Action	Number Tested	Number Not Initiated Within 20 Days
License Suspensions	16	3
License Revocations	5	3
License Denials	9	1
License Application Suspensions	4	1
<b>Total</b>	<b>34</b>	<b>8</b>

For example, we noted that the Department did not initiate:

- Suspension of a license until 52 days after disqualifying information was received indicating the licensee had been arrested on charges of resisting an officer without violence, use of a firearm while under the influence, and openly carrying a weapon.
- Revocation of a license until 143 days after disqualifying information was received from FDLE disclosing for a licensee an

<sup>4</sup> Section 790.06, Florida Statutes.

<sup>5</sup> We considered the initiation of license revocations, suspensions, and denials, as well as license application suspensions, to occur upon the Department's recommendation for administrative action (where available), although the actual execution of the action may have occurred at a later date. If the date of recommendation was not available, the actual execution date was used for purposes of our audit tests.

<sup>6</sup> We considered an administrative action to be the suspension, revocation, or denial of a concealed weapon or firearm license, or the suspension of a license application.



adjudication withheld<sup>7</sup> disposition on a charge of felony battery on a victim 12 years of age up to 16 years of age. While the initiation of the revocation of the license had not been timely, this individual's license had been timely suspended.

- Revocation of a license until 115 days after disqualifying information was received from FDLE disclosing for a licensee an adjudication withheld disposition on charges of felony battery (great bodily harm) and aggravated battery with a deadly weapon. While the initiation of the revocation of the license had not been timely, this individual's license had been timely suspended.
- Suspension of a license application until 544 days after the licensee failed to meet the Department's deadline for submitting criminal disposition information necessary to determine license eligibility. As of May 17, 2007, no license had been issued; however, the file remained in open status.

In response to inquiry, the Department stated that time delays occurred because of staffing shortages and a high caseload. Absent the timely initiation of administrative actions, there is an increased risk that unqualified persons may remain licensed to carry a concealed weapon or firearm.

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**Recommendation:** To promote the efficient handling of license application suspensions and ensure that concealed weapons or firearms licenses are not issued to and held by unqualified persons, we recommend the Department increase its efforts to initiate administrative actions within 20 days of the receipt of disqualifying information.

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### **Finding No. 3: Process Enhancements**

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In addition to the instances of untimely initiation of administrative actions noted above in Finding No. 2, our audit tests also disclosed additional cases in which efficient action was not taken by the Department. In these instances, excessive amounts of time or other resources were expended. Specifically:

- The Department has established an error or omission (EO) letter process to help ensure that upon the receipt of an application for a concealed weapons license, applicants are

timely and accurately notified of any deficiencies.

During the course of our testing, we noted that 2 of 29 (approximately 7 percent) of the EO letters tested did not properly reflect actual deficiencies in the application received. In one instance, the Department erroneously requested from an applicant \$42 for a fingerprint card processing fee that had already been paid. In the other instance, the Department requested from an applicant, personal information which had previously been submitted with the application.

- Our audit found that the Department sent unnecessary correspondence<sup>8</sup> to concealed weapon and firearm licensees while processing 4 out of the 34 reviewed administrative actions (approximately 12 percent).

For example, we noted for one licensee, over a period of approximately 14 months, the following occurred. Initially, the Department sent a notice of suspension three times. Then, the Department requested the notice of suspension be served three times by a process server. After the Department received an affidavit indicating that the notice could not be delivered by the process server, publication of the notice of suspension was requested. Finally, an administrative complaint<sup>9</sup> was sent to the licensee twice, followed by a request that the complaint be served to the licensee.

Improvements in the efficiency with which licensure actions are processed may enable the Department to more effectively utilize limited resources. As indicated in Finding No. 2, the Department has attributed some processing delays to staffing shortages and a high caseload.

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**Recommendation:** We recommend the Department review the instances cited above and consider whether processing enhancements, including the implementation of service of process guidelines, may be appropriate.

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<sup>7</sup> Court decision at any point after filing of a criminal complaint, to continue court jurisdiction, but stop short of pronouncing judgment.

<sup>8</sup> We considered Department administrative action-related correspondence to include notices of suspension, certificates of service, requests for service of a notice of suspension, and administrative complaints.

<sup>9</sup> An administrative complaint is a legal process by which the Department formally expresses its intent to revoke a concealed weapon or firearm license.

**Finding No. 4: Warrant Information**

Florida law<sup>10</sup> requires that the Department “shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a [concealed weapons] license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case.”

Although warrants issued by a court provide, in some instances, an indication that an individual may have been charged with a disqualifying crime, the Department has been unable to utilize warrants as a source of information in making licensure decisions. Based on responses received to our inquiries of Department and FDLE staff, the electronic information that has been available in the past did not allow an efficient match of potentially disqualifying warrant data to that shown for licensees and applicants. However, the capability for the Department to employ warrant information in determining license eligibility is emerging. As of May 2007, FDLE reported that 349,745<sup>11</sup> warrants were recorded in the Florida Crime Information Center (FCIC) system. In response to inquiry, FDLE staff stated that FCIC warrant information currently includes various items regarding the warrant, including the name, sex, race, date-of-birth, and social security number of the wanted individual.

Additionally, FDLE staff noted that FDLE has the capability to disclose the underlying offense shown by the warrant, and as of March 1, 2007, programming has been added to FCIC that allows the charge level (felony/misdemeanor) to also be identified. Though FDLE indicated that many of the older warrant records in FCIC do not show a charge level code, law enforcement agencies responsible for inputting FCIC data are in the process of record validation that will incorporate charge level codes for some of the older warrants.

<sup>10</sup> Section 790.06(3), Florida Statutes.

<sup>11</sup> This figure represents the cumulative total number of warrants entered into FCIC.

**Recommendation:** The Department, in consultation with FDLE, should consider developing a methodology that would allow the efficient use of outstanding warrant information to identify licensees and applicants who are awaiting disposition of formal charges relating to a disqualifying crime. To fully evaluate the cost-effectiveness of the use of warrant information, the Department should initially approach using the information through a pilot project.

**PRIOR AUDIT FOLLOW-UP**

As part of our current audit, we determined that the Department had taken adequate corrective actions for findings included in audit report Nos. 2006-029 and 2006-051.

**OBJECTIVES, SCOPE, AND METHODOLOGY**

This operational audit focused on the Department’s administration of the State’s concealed weapons and firearms licensing program. Additionally, it included a follow-up on prior audit findings contained in audit report Nos. 2006-029 and 2006-051 relating to the Department’s contract management procedures and practices and various Department inspection programs, respectively.

The objectives of this audit were:

- To evaluate selected internal controls relevant to the Department’s administration of the State’s concealed weapons and firearms licensing program.
- To evaluate the extent to which the Department has complied with statutory provisions related to license issuance, denial, suspension, and revocation.
- To determine whether the Department has corrected, or is in the process of correcting, deficiencies disclosed in audit report Nos. 2006-029 and 2006-051.

Our operational audit included examinations of various transactions (as well as events and conditions) occurring during the period March 1, 2005, through February 28, 2007, and selected actions taken through June 30, 2007. In conducting our audit, we:

- Interviewed Department personnel and reviewed Department procedures.



- Obtained an understanding of internal controls and observed, documented, and tested key processes and procedures related to the concealed weapons licensing process.
- Tested 40 initial concealed weapons license issuances from the population of 113,568 initial concealed weapon license issuances.
- Tested 35 concealed weapons license renewals from the population of 103,164 concealed weapon license renewals.
- Tested 30 error or omission letters from the population of 31,329 error or omission letters.
- Examined concealed weapons-related receipts and selected transactions (30 receipts totaling \$1,832 from the population of concealed weapons-related receipts totaling approximately \$20 million).
- Examined 34 administrative actions taken by the Department against concealed weapons licensees and applicants from the population of 8,107 administrative actions. Additionally, we examined 36 administrative actions for the validity of the Department's recording of match report receipt dates from the population of 3,989 such administrative actions.
- Performed various analytical reviews of Department-provided data, including default license issuances.

- Reviewed Department information technology controls related to the concealed weapons licensing system.
- Evaluated Department actions taken to correct the deficiencies disclosed in audit report Nos. 2006-029 and 2006-051.
- Performed various other audit procedures as necessary to accomplish the objectives of the audit.

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#### AUTHORITY

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Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA  
Auditor General

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#### MANAGEMENT RESPONSE

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In a letter dated December 13, 2007, the Commissioner provided a response to our preliminary and tentative audit findings. The letter is included at the end of this report as Appendix A.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was conducted in accordance with applicable *Generally Accepted Government Auditing Standards*. This audit was conducted by Matthew Tracy, CPA, and Melisa Hevey, CPA, and was supervised by Richard Munson, CPA. Please address inquiries regarding this report to Kathryn D. Walker, CPA, Audit Manager, by e-mail ([kathrynwalker@aud.state.fl.us](mailto:kathrynwalker@aud.state.fl.us)) or by telephone (850-487-9085).

This report and other audit reports prepared by the Auditor General can be obtained on our Web site (<http://www.myflorida.com/audgen>); by telephone (850-487-9024); or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

**APPENDIX A  
MANAGEMENT RESPONSE**



Florida Department of Agriculture and Consumer Services  
CHARLES H. BRONSON, Commissioner  
The Capitol • Tallahassee, FL 32399-0800  
[www.doacs.state.fl.us](http://www.doacs.state.fl.us)

Please Respond to:

December 13, 2007

David W. Martin, CPA  
Auditor General  
111 West Madison Street  
Claude Pepper Building, G-74D  
Tallahassee, Florida 32399

Dear Mr. Martin:

The following comments are provided in response to the preliminary and tentative findings and recommendations in your audit of "Concealed Weapons Licensing" in the Department of Agriculture and Consumer Services.

As acknowledged in your report, concealed weapons licensing activities have significantly increased while staff resources have remained constant in the Division of Licensing. Increased licensing activity with a constant level of human resources may have resulted in the accuracy and timeliness issues identified in the audit.

**Finding 1: Data Accuracy**

Reports have been reformatted to facilitate data entry and training of staff was provided.

**Finding 2: Timeliness of Initiating Administrative Actions**

Efforts have been increased to initiate administrative actions within 20 days of receipt of disqualifying information by prioritizing activities. The current order of priority is domestic violence injunction suspensions, arrest suspensions, and license issuance. While this has improved the timeliness of suspensions/revocations, it has had an adverse impact on concealed weapons licensing and other Division regulatory programs.

**Finding 3: Process Enhancements**

Process enhancements have been made to the computer application to prevent multiple error/omission letters and duplicative correspondence, and training of staff was provided. Service of process guidelines are being strengthened and formalized.

**Finding 4: Warrant Information**

The potential use of outstanding warrant information as recommended will be considered.



**Florida Agriculture and Forest Products**  
\$97 Billion for Florida's Economy

APPENDIX A  
MANAGEMENT RESPONSE (CONTINUED)

David W. Martin, CPA  
Auditor General  
Page 2 of 2

I appreciate the interest and efforts of your staff and the professionalism they exhibited in helping to improve operations of state government.

Sincerely,

A handwritten signature in black ink, reading "Charles H. Bronson". The signature is written in a cursive, flowing style.

CHARLES H. BRONSON  
COMMISSIONER OF AGRICULTURE

CHB/gb