



Government Operations Appropriations Subcommittee

**Monday, March 31, 2014
11:00 AM – 1:00 PM
Morris Hall (17 HOB)**

MEETING PACKET

**Will Weatherford
Speaker**

**Clay Ingram
Chair**



The Florida House of Representatives
Appropriations Committee
Government Operations Appropriations Subcommittee

Will Weatherford
Speaker

Clay Ingram
Chair

March 31, 2014

AGENDA
11:00 AM – 1:00 PM
Morris Hall

- I. Call to Order/Roll Call
- II. Consideration of Bills
 - CS/HB 593 Building Construction by Rep. Eagle
 - CS/HB 773 Pugilistic Exhibitions by Rep. Hutson
 - CS/HB 1267 Family Trust Companies by Rep. McBurney
- III. Closing Remarks/Adjourn

6

6

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 593 Building Construction
SPONSOR(S): Business & Professional Regulation Subcommittee; Eagle and others
TIED BILLS: IDEN./SIM. BILLS: SB 1106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	13 Y, 0 N, As CS	Whittier	Luczynski
2) Government Operations Appropriations Subcommittee		Topp	Topp BPT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

CS/HB 593 contains provisions related to building construction, codes, permitting, and energy-efficiency rating. The bill does the following:

- Provides an additional method for local governments to provide notices to alleged code enforcement violators;
- Requires application to the Department of Health for an operating permit for a public swimming pool before an application may be filed for a building permit, and provides additional requirements for obtaining an operating permit;
- Specifies inspection criteria for construction or modification of manufactured buildings or building modules;
- Revises the allocation of funds from building permit surcharges to include the Future Builders of America Program;
- Authorizes building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and provides specific procedures for those interpretations;
- Revises education and training requirements for the Florida Building Code Compliance and Mitigation Program;
- Clarifies that a repair or alteration to an existing home does not mandate a hard-wired smoke alarm if a 10-year battery-operated alarm is installed;
- Provides that, effective January 1, 2015, a newly-installed or replaced battery-powered smoke alarm must be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years; and
- Revises the definition of "building energy-efficiency rating system" to spell out what a rating system is comprised of and the criteria that should be considered for new and existing construction and deletes the list of qualified entities that comprises the current definition.

The bill allocates to the Future Builders of America Program \$250,000 from funds remitted to the Department of Business and Professional Regulation's (DBPR) Professional Regulation Trust Fund, from an existing 1.5 percent surcharge on each building permit application fee. However, the bill provides no appropriation of the \$250,000 to DBPR or Future Builders of America Program.

The bill takes effect July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Local Government Codes and Ordinances (Section 1)

Present Situation

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. There are four options cited in s. 162.12(1), F.S., for providing notices:

- By certified mail, return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation;
- By hand delivery by the sheriff or other law enforcement officer, code inspector, or other designated person;
- By leaving the notice at the violator's usual place of residence with any person residing there above the age of 15; or
- For commercial premises, by leaving the notice with the manager or other person in charge.

In addition to those noticing provisions, the code enforcement board may serve notice through publication or posting methods.¹

Some local governments have reported finding it costly to have to send notices by certified mail with return receipt requested.

Effect of Proposed Changes

The bill authorizes an additional method – first class mail – for local governments to provide notices to alleged code enforcement violators. See DRAFTING ISSUES OR OTHER COMMENTS section.

Public Swimming Pools (Sections 2, 3, and 7)

Present Situation

In 2012, the Legislature determined that local building departments would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the Department of Health (department) would continue to have jurisdiction over the operating permits for public swimming pools.²

A "public swimming pool" or "public pool" is defined as:

A watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. This term includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which

¹ Section 162.12(2), F.S.

² Chapter 2012-184, Laws of Fla.

admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.³

In order to operate or continue to operate a public swimming pool, a valid operating permit from the department must be obtained. Application for an operating permit must include the following:

- Description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- Method and manner of water purification, treatment, disinfection, and heating;
- Safety equipment and standards to be used; and
- Any other pertinent information deemed necessary by the department.⁴

If the department determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and departmental rules, the department will issue a permit. However, if the department determines that the pool is not in compliance with state laws and departmental rules, the department will deny the application for a permit. The denial must be in writing and must list the circumstances for the denial. Upon correction of those circumstances, the applicant may reapply for a permit.⁵ The operating permit must be renewed annually and posted in a conspicuous place.⁶

Currently, the order of the permitting process that is required to build a public swimming pool is unclear. Local governments have reported entire public swimming pools being completed before owners discovered issues or problems after applying for the operating permit.

Effect of Proposed Changes

The bill requires those desiring to construct, develop, or modify a public swimming pool to apply to the Department of Health for an operating permit before applying for a building permit from the local enforcement agency. A local enforcement agency is an "agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities."⁷

The bill prohibits the local enforcement agency from issuing a building permit to construct, develop, or modify a public swimming pool without proof of application for an operating permit and does not allow issuance of a certificate of completion or occupancy until the operating permit is issued.

The bill also adds the following to the list of information that is to accompany the operating permit application:

- A description of the structure, its appurtenances, and its operation.
- A copy of the final approval from the local enforcing agency.

³ Section 514.011(2), F.S.

⁴ Section 514.031(1), F.S.

⁵ *Id.*

⁶ Section 514.031(4), F.S.

⁷ Section 553.71(5), F.S.

Florida Building Code Requirements for Construction or Modification of Manufactured Buildings and Building Modules (Section 4)

Present Situation

The Florida Building Commission (commission), which is housed within the Department of Business and Professional Regulation (department), is a 26-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance and administers the Building Code Training Program. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the code.⁸

Section 553.72, F.S., provides the following regarding the Florida Building Code:

The purpose and intent of this act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code, to be called the Florida Building Code, which consists of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state and to the enforcement of such requirements and which will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer.

Section 553.37(1), F.S., requires the commission to adopt, within the Florida Building Code, requirements for construction or modification of manufactured buildings and building modules, to address:

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

"Manufactured building" or "modular building" means a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured in manufacturing facilities for installation or erection as a finished building or as part of a finished building, which shall include, but not be limited to, residential, commercial, institutional, storage, and industrial structures. The term includes buildings not intended for human habitation such as lawn storage buildings and storage sheds manufactured and assembled offsite by a manufacturer certified in conformance with this part, but does not include a mobile home.⁹

"Module" means a separately transported three-dimensional component of a manufactured building which contains all or a portion of structural systems, electrical systems, plumbing systems, mechanical systems, fire systems, and thermal systems.¹⁰

⁸ Section 553.74, F.S.

⁹ Section 553.36(13), F.S.

¹⁰ Section 553.36(15), F.S.

Effect of Proposed Changes

The bill details the "minimum inspection criteria" under s. 553.37(1), F.S., by requiring the approved inspection agency to do the following:

- Observe the first building built, or with regard to components, observe the first unit assembled, after certification of the manufacturer,¹¹ from start to finish, inspecting all subsystems: electrical, plumbing, structural, mechanical or thermal;
- Continue observation of the manufacturing process until the approved inspection agency determines that the manufacturer's quality control program, in conjunction with the application of the plans approved by the approved inspection agency, will result in a building and components that meet or exceed the applicable Florida Building Code requirements;
- Thereafter, inspect each module produced during at least one point of the manufacturing process and inspect at least 75 percent of the subsystems of each module: electrical, plumbing, structural, mechanical or thermal; and
- With respect to components, inspect at least 75 percent of the manufactured building components and at least 20 percent of the storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less.

Florida Building Code Surcharge (Section 5)

Present Situation

The Florida Building Commission is authorized to adopt, modify, update, interpret, and maintain the Florida Building Code (code) and provide that code enforcement is performed by authorized state and local government enforcement agencies.¹² In order for the Department of Business and Professional Regulation (department) to administer and carry out the code provisions, there is a surcharge that is assessed at 1.5 percent of the permit fees associated with enforcement of the code.^{13, 14}

The funds that are collected from the surcharge and remitted to the department are deposited in the Professional Regulation Trust Fund and then allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program.¹⁵ Funds allocated to the Florida Building Code Compliance and Mitigation Program are \$925,000 each fiscal year.¹⁶

Effect of Proposed Changes

From the building permit fees remitted to the department, the bill allocates to the Future Builders of America Program \$250,000 per fiscal year, beginning in FY 2014-2015.

The Future Builders of America Program (Program) is a nonprofit workforce development and student leadership program of the Florida Home Builders Foundation. The program links students in school with local building communities and industries.¹⁷ As of November 2013, there were 11 chapters in Florida,

¹¹ The manufacturer must be certified by the Florida Building Commission.

¹² Section 553.72(3), F.S.

¹³ Section 553.721, F.S.

¹⁴ The minimum amount collected on any permit issued is \$2.

¹⁵ The Florida Building Code Compliance and Mitigation Program is established in s. 553.841, F.S.

¹⁶ Funds used by the department as well as funds to be transferred to the Department of Health shall be as prescribed in the annual General Appropriations Act.

¹⁷ Future Builders of America website: <http://www.futurebuildersofamerica.org/>. Last viewed on March 16, 2014.

located in Charlotte, DeSoto, Manatee, Okaloosa, Polk, Sarasota, Volusia, and Walton Counties, and the Treasure Coast.¹⁸

According to Program staff, the current objectives of the Program are the following:

- Expand the number of Future Builders of America local chapters from eleven to at least twenty over the next three years;
- Increase student enrollment in local chapters from 379 students, currently, to at least 800 over the next three years; and
- Encourage local participation from builders, developers and other interested parties to support these local chapters as mentors, instructors, and financially.¹⁹

Florida Building Code Interpretation (Section 6)

Present Situation

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

The Florida Accessibility Code for Building Construction (accessibility code), an element of the code, is adopted by the commission and prescribes requirements related to ensuring access for the disabled for new construction activity, including things such as ramps, door widths, and particular plumbing fixtures. The accessibility code combines requirements imposed by the federal regulations that implement the Americans with Disabilities Act and Florida-specific requirements specified in Part I of Chapter 553, F.S.²⁰

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

Effect of Proposed Changes

The bill authorizes building officials, local enforcement agencies, and the commission to interpret the accessibility code and removes language restricting declaratory statements to Florida-specific requirements of the accessibility code.

Florida Building Code Compliance and Mitigation Program (Section 8)

Present Situation

The Department of Business and Professional Regulation (department) administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the Florida Building Code (code) and ensure consistent education, training, and communication of the code's requirements,

¹⁸ *Id.*

¹⁹ Future Builders of America, *Goals and Objectives* (on file with the Business & Professional Regulation Subcommittee).

²⁰ Email correspondence with staff of the Department of Business and Professional Regulation (March 5, 2014) (on file with the Business & Professional Regulation Subcommittee).

including, but not limited to, methods for mitigation of storm-related damage.²¹ The program is geared toward persons *licensed* in the design and construction industries, but does not address those *employed* in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with the department.²²

Effect of Proposed Changes

The bill revises education and training requirements of the program to include, in addition to maintaining a thorough knowledge of the code, a thorough knowledge of code compliance and enforcement, duties related to consumers, project completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage. It expands the program to include people employed in the design and construction industries.

Smoke Alarms in One-Family and Two-Family Dwellings and Townhomes (Section 9)

Present Situation

In relation to smoke alarms in one-family and two-family dwellings and townhomes, the Florida Building Code (code) provides that, "When alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be equipped with smoke alarms located as required for new dwellings."²³

Exceptions include the following:

- Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck.
- Installation, alteration or repairs of plumbing or mechanical systems.²⁴

With regard to power sources for alarms, the code requires that smoke alarms receive their primary power from the building wiring when the wiring is served from a commercial source, and when primary power is interrupted, receive power from a battery. Wiring must be permanent and without a disconnecting switch other than those required for overcurrent protection. Smoke alarms must be interconnected.²⁵

Exceptions include the following:

- Smoke alarms may be battery-operated when installed in buildings without commercial power.
- Interconnection and hard-wiring of smoke alarms in existing areas are not required where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space, or basement available which could provide access for hard wiring and interconnection without the removal of interior finishes.²⁶

²¹ Section 553.841(2), F.S.

²² Section 553.841(3), F.S.

²³ Section R314.3.1 of the 2010 Florida Building Code, Residential.

²⁴ *Id.*

²⁵ Section R314.4 of the 2010 Florida Building Code, Residential.

²⁶ *Id.*

Effect of Proposed Changes

The bill creates s. 553.883, F.S., to address smoke alarms in one-family and two-family dwellings and townhomes. The bill requires owners of one-family and two-family dwellings and townhomes undergoing a repair, or an alteration level 1 as defined in the Florida Existing Building Code²⁷ to use a smoke alarm powered by a 10-year non-removable, non-replaceable battery in lieu of retrofitting the dwelling with a smoke alarm powered by the electrical system.

The bill requires that, effective January 1, 2015, a battery-powered smoke alarm that is installed or that replaces an existing battery-powered smoke alarm be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years.

Florida Building Energy-Efficiency Rating System (Section 10)

Present Situation

Part VIII of ch. 553, F.S., is entitled the "Florida Building Energy-Efficiency Rating Act." The intent is for the state to "encourage the consideration of energy-efficiency rating systems in the market so as to provide market rewards for energy-efficient buildings and to those persons or companies designing, building, or selling energy-efficient buildings,"²⁸ and applies to all public, commercial, and residential buildings in the state.²⁹ An energy-efficiency rating is an "unbiased indication of a building's relative energy efficiency based on consistent inspection procedures, operating assumptions, climate data, and calculation methods."³⁰ Utilization of rating systems is voluntary for public and commercial buildings.³¹

Historically, the Department of Business and Professional Regulation (DBPR) provided a statewide uniform system for rating the energy efficiency of buildings and developed a training and certification program to certify energy raters. The DBPR established the Building Energy Raters System (BERS) program to train and certify energy raters and outsourced administration of the BERS program to the Florida Solar Energy Center (FSEC) on a no-cost basis through a Memorandum of Understanding. An energy rater is "an individual certified by a building energy-efficiency rating system to perform building energy-efficiency ratings for the building type and in the rating class for which the rater is certified."³² Energy raters were trained and tested by FSEC and DBPR issued the rater a certificate based on completion of the FSEC program.

The BERS rules adopted, by reference, the 2006 Mortgage Industry National Home Energy Rating Systems Accreditation Standards, promulgated by the National Association of State Energy Officials (NASEO)/Residential Energy Services Network (RESNET) as the standard for energy rater certifications under the BERS program. As a national program for energy rating, RESNET's services and rating procedures are similar to those of the BERS program.^{33, 34}

In 2013, the Legislature removed the energy-efficiency rating jurisdiction from DBPR and defined "building energy-efficiency rating system" to mean a whole building energy evaluation system

²⁷ See DRAFTING ISSUES OR OTHER COMMENTS section.

²⁸ Section 553.991, F.S.

²⁹ Section 553.994, F.S.

³⁰ Section 553.993(6), F.S.

³¹ Department of Business and Professional Regulation, Agency Analysis of SB 1251 (March 13, 2013) (on file with the Business & Professional Regulation Subcommittee).

³² Section 553.993(7), F.S.

³³ Department of Business and Professional Regulation, Agency Analysis of SB 1251 (March 13, 2013) (on file with the Business & Professional Regulation Subcommittee).

³⁴ Based on adoption of the NASEO standard, Florida BERS raters are also required to take national examinations and certifications

established by the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Energy Center.³⁵

Effect of Changes

The bill amends s. 553.993(3), F.S., to specify criteria to be used in a building energy-efficiency rating system rather than listing qualified entities. It must be a system that “provides a reliable and scientifically-based analysis of a building’s energy consumption or energy features and allows comparison to similar building types in similar climate zones where applicable.”

Specifically, the rating system must do the following:

- Use standard calculations, formulas, and scoring methods;
- Be applicable nationally;
- Compare a building to a clearly defined and researched baseline or benchmark;
- Require qualified professionals to conduct the rating or assessment; and
- Provide a labeling and recognition program with specific criteria or levels.

The bill requires that residential program benchmarks for new construction be consistent with national building standards and residential building program benchmarks for existing construction be consistent with national home energy rating standards.

The bill requires at least one level of oversight performed by “an organized and balanced group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods.”

The bill strikes the names of the qualified entities from the definition of “building energy-efficiency rating system.”

B. SECTION DIRECTORY:

Section 1. Amends s. 162.12, F.S., providing an additional method for local governments to provide notices to alleged code enforcement violators.

Section 2. Amends s. 514.03, F.S., requiring an application for an operating permit before filing an application for a building permit for a public swimming pool.

Section 3. Amends s. 514.031, F.S., providing additional requirements for obtaining a public swimming pool operating permit.

Section 4. Amends s. 553.37, F.S., specifying inspection criteria for construction or modification of manufactured buildings or modules.

Section 5. Amends s. 553.721, F.S., revising the allocation of funds from the building permit surcharge.

Section 6. Amends s. 553.775, F.S., authorizing building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and specifies procedures for such interpretations.

Section 7. Amends s. 553.79, F.S., prohibiting a local enforcing agency from issuing a building permit for a public swimming pool without proof of application for an operating permit and requiring issuance of an operating permit before a certificate of completion or occupancy is issued.

Section 8. Amends s. 553.841, F.S., revising education and training requirements of the Florida Building Code Compliance and Mitigation Program.

Section 9. Creates s. 553.883, F.S., authorizing use of smoke alarms powered by 10-year non-removable, non-replaceable batteries in certain circumstances and requiring use of such alarms by January 1, 2015.

Section 10. Amends s. 553.993, F.S., revising the definition of the term "building energy-efficiency rating system" to require consistency with certain national standards for new construction and existing construction and providing for oversight.

Section 11. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Clarification on the order of permit applications for public swimming pools may result in cost savings due to issues and problems being identified prior to construction.

Allocating \$250,000 of the surcharge funds to the Future Builders of America will be beneficial to the chapters utilizing these funds.

It may be costly for owners of one-family and two-family dwellings who are installing or replacing battery-powered smoke alarms to replace them with battery-powered smoke alarms that are powered by 10-year non-removable, non-replaceable batteries, as required by the bill.

D. FISCAL COMMENTS:

The bill allocates \$250,000 to the Future Builders of America Program each fiscal year, beginning in the 2014-2015, fiscal year. However, the bill provides no appropriation of such funds for a Future Builders of America Program or DBPR. The funds proposed for allocation to Future Builders of American Program are generated from an existing 1.5 percent surcharge on each building permit application fee.

In FY 2013-14, the DBPR estimates approximately \$6.0 million in revenues will be collected from the 1.5 percent fee on building permits and projects expenditures on existing operations of the Florida Building Commission (funded from the building permit surcharge) at \$4.0 million.³⁶ The bill does not specify which entity will disburse the funds nor is criteria provided on how the funds are to be utilized and monitored.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

According to the Department of Business and Professional Regulation, with regard to the provision allowing the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction, the U.S. Department of Justice confirmed that states that adopt the federal Americans with Disabilities Act guidelines as state law may interpret the provision, "provided that it is clear that it is an interpretation of STATE law and NOT of the federal guidelines."³⁷

B. RULE-MAKING AUTHORITY:

Not applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

At the March 11, 2014, Business & Professional Regulation Subcommittee Meeting, Members discussed the ramifications of adding "first-class mail" as an option for local governments to give notice to an alleged building code violator since there would not be evidence that the alleged violator received the notice. The sponsor has agreed to review this option in Section 1. (s. 162.12(1)(a), F.S.) of the bill.

At the March 11, 2014, Business & Professional Regulation Subcommittee Meeting, Amendment 4, which was adopted to address smoke alarms in one-family and two-family dwellings and townhomes, had an incorrect section of code referenced. The correct section of code should be "Florida Building Code, Residential."

³⁶ Department of Business and Professional Regulation, *Florida Building Commission, Operating Account, Actual and Projected Revenues, Expenses and Changes in Account Balances*, provided to staff of the Government Operations Appropriations Subcommittee by email dated March 25, 2014 (on file with the Government Operations Appropriations Subcommittee).

³⁷ Department of Business and Professional Regulation, Agency Analysis of HB 593 (February 20, 2014) (on file with the Business & Professional Regulation Subcommittee).

Section 5 of the bill, regarding allocation of the surcharge to the Future Builders of America Program, does not specify which entity will disburse the funds nor is any criteria provided on how the funds are to be utilized and monitored.

The Department of Business and Professional Regulation notes that with regard to expanding the Florida Building Code Compliance and Mitigation Program to include persons employed in the design and construction industries, "The expansion of the program to include unlicensed employees in the construction industry may present significant challenges. The program will be required to devise some means to verify that recipients of services and materials of the program are employed within the construction industry and to determine the eligibility of all recipients to work in the United States."³⁸

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2014, the Business & Professional Regulation Subcommittee adopted five amendments and reported the bill favorably as a committee substitute. The committee substitute contains the following changes:

- Adds to the list of requirements for obtaining a public swimming pool operating permit a copy of the final approval from the local enforcing agency.
- Requires issuance of an operating permit before a certificate of completion or occupancy may be issued for construction of a public swimming pool.
- Removes reference to "public bathing place" within the Department of Health's statutes since public bathing places are no longer under the jurisdiction of that department.
- Replaces inspection criteria for manufactured buildings and building modules with language that is consistent with the current building code.
- Clarifies that a repair or alteration to an existing home does not mandate a hard-wired smoke alarm if a 10-year battery-operated alarm is installed. Provides that, effective January 1, 2015, a newly-installed or replaced battery-powered smoke alarm must be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years.
- Revises the definition of "building energy-efficiency rating system" to spell out what a rating system is comprised of and the criteria that should be considered for new and existing construction. Deletes the list of the qualified entities that comprises the current definition.

This staff analysis is drafted to reflect the committee substitute.

³⁸ *Id.*

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

27 before a certificate of completion or occupancy is
 28 issued; amending s. 553.841, F.S.; revising education
 29 and training requirements of the Florida Building Code
 30 Compliance and Mitigation Program; creating s.
 31 553.883, F.S.; authorizing use of smoke alarms powered
 32 by 10-year nonremovable, nonreplaceable batteries in
 33 certain circumstances; requiring use of such alarms by
 34 a certain date; amending s. 553.993, F.S.; revising
 35 the definition of the term "building energy-efficiency
 36 rating system" to require consistency with certain
 37 national standards for new construction and existing
 38 construction; providing for oversight; providing an
 39 effective date.

40
 41 Be It Enacted by the Legislature of the State of Florida:

42
 43 Section 1. Paragraph (a) of subsection (1) of section
 44 162.12, Florida Statutes, is amended to read:

45 162.12 Notices.—

46 (1) All notices required by this part must be provided to
 47 the alleged violator by:

48 (a) First-class mail or, at the option of the local
 49 government, certified mail, return receipt requested, to the
 50 address listed in the tax collector's office for tax notices or
 51 to the address listed in the county property appraiser's
 52 database. The local government may also provide an additional

53 notice to any other address it may find for the property owner.
 54 For property owned by a corporation, notices may be provided by
 55 certified mail to the registered agent of the corporation. If
 56 any notice sent by certified mail is not signed as received
 57 within 30 days after the postmarked date of mailing, notice may
 58 be provided by posting as described in subparagraphs (2)(b)1.
 59 and 2.;

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

62 514.03 Approval necessary to construct, develop, or modify
 63 public swimming pools or public bathing places.—

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

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

74 Section 3. Paragraph (a) of subsection (1) of section
 75 514.031, Florida Statutes, is amended to read:

76 514.031 Permit necessary to operate public swimming pool.—

77 (1) It is unlawful for any person or public body to
 78 operate or continue to operate any public swimming pool without

79 a valid permit from the department, such permit to be obtained
80 in the following manner:

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

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

87 ~~2.1.~~ A description of the source or sources of water
88 supply, and the amount and quality of water available and
89 intended to be used.

90 ~~3.2.~~ The method and manner of water purification,
91 treatment, disinfection, and heating.

92 ~~4.3.~~ The safety equipment and standards to be used.

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

95 ~~6.4.~~ Any other pertinent information deemed necessary by
96 the department.

97 Section 4. Paragraph (c) of subsection (1) of section
98 553.37, Florida Statutes, is amended to read:

99 553.37 Rules; inspections; and insignia.—

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

104 (c) ~~Minimum~~ Inspection criteria, which shall require the

105 approved inspection agency to:

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

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

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

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

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

127 553.721 Surcharge.—In order for the Department of Business
 128 and Professional Regulation to administer and carry out the
 129 purposes of this part and related activities, there is created a
 130 surcharge, to be assessed at the rate of 1.5 percent of the

131 permit fees associated with enforcement of the Florida Building
 132 Code as defined by the uniform account criteria and specifically
 133 the uniform account code for building permits adopted for local
 134 government financial reporting pursuant to s. 218.32. The
 135 minimum amount collected on any permit issued shall be \$2. The
 136 unit of government responsible for collecting a permit fee
 137 pursuant to s. 125.56(4) or s. 166.201 shall collect the
 138 surcharge and electronically remit the funds collected to the
 139 department on a quarterly calendar basis for the preceding
 140 quarter and continuing each third month thereafter. The unit of
 141 government shall retain 10 percent of the surcharge collected to
 142 fund the participation of building departments in the national
 143 and state building code adoption processes and to provide
 144 education related to enforcement of the Florida Building Code.
 145 All funds remitted to the department pursuant to this section
 146 shall be deposited in the Professional Regulation Trust Fund.
 147 Funds collected from the surcharge shall be allocated to fund
 148 the Florida Building Commission, ~~and~~ the Florida Building Code
 149 Compliance and Mitigation Program under s. 553.841, and the
 150 Future Builders of America Program. Beginning in the 2013-2014
 151 ~~fiscal year,~~ Funds allocated to the Florida Building Code
 152 Compliance and Mitigation Program shall be \$925,000 each fiscal
 153 year. Beginning in the 2014-2015 fiscal year, funds allocated to
 154 the Future Builders of America Program shall be \$250,000 each
 155 fiscal year. The funds collected from the surcharge may not be
 156 used to fund research on techniques for mitigation of radon in

157 existing buildings. Funds used by the department as well as
 158 funds to be transferred to the Department of Health shall be as
 159 prescribed in the annual General Appropriations Act. The
 160 department shall adopt rules governing the collection and
 161 remittance of surcharges pursuant to chapter 120.

162 Section 6. Section 553.775, Florida Statutes, is amended
 163 to read:

164 553.775 Interpretations.—

165 (1) It is the intent of the Legislature that the Florida
 166 Building Code and the Florida Accessibility Code for Building
 167 Construction be interpreted by building officials, local
 168 enforcement agencies, and the commission in a manner that
 169 protects the public safety, health, and welfare at the most
 170 reasonable cost to the consumer by ensuring uniform
 171 interpretations throughout the state and by providing processes
 172 for resolving disputes regarding interpretations of the Florida
 173 Building Code and the Florida Accessibility Code for Building
 174 Construction which are just and expeditious.

175 (2) Local enforcement agencies, local building officials,
 176 state agencies, and the commission shall interpret provisions of
 177 the Florida Building Code and the Florida Accessibility Code for
 178 Building Construction in a manner that is consistent with
 179 declaratory statements and interpretations entered by the
 180 commission, except that conflicts between the Florida Fire
 181 Prevention Code and the Florida Building Code shall be resolved
 182 in accordance with s. 553.73(11)(c) and (d).

183 (3) The following procedures may be invoked regarding
184 interpretations of the Florida Building Code or the Florida
185 Accessibility Code for Building Construction:

186 (a) Upon written application by any substantially affected
187 person or state agency or by a local enforcement agency, the
188 commission shall issue declaratory statements pursuant to s.
189 120.565 relating to the enforcement or administration by local
190 governments of the Florida Building Code or the Florida
191 Accessibility Code for Building Construction.

192 (b) When requested in writing by any substantially
193 affected person or state agency or by a local enforcement
194 agency, the commission shall issue a declaratory statement
195 pursuant to s. 120.565 relating to this part and ss. 515.25,
196 515.27, 515.29, and 515.37. Actions of the commission are
197 subject to judicial review under s. 120.68.

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

205 1. The commission shall coordinate with the Building
206 Officials Association of Florida, Inc., to designate panels
207 composed of five members to hear requests to review decisions of
208 local building officials. The members must be licensed as

209 building code administrators under part XII of chapter 468 and
210 must have experience interpreting and enforcing provisions of
211 the Florida Building Code and the Florida Accessibility Code for
212 Building Construction.

213 2. Requests to review a decision of a local building
214 official interpreting provisions of the Florida Building Code or
215 the Florida Accessibility Code for Building Construction may be
216 initiated by any substantially affected person, including an
217 owner or builder subject to a decision of a local building
218 official or an association of owners or builders having members
219 who are subject to a decision of a local building official. In
220 order to initiate review, the substantially affected person must
221 file a petition with the commission. The commission shall adopt
222 a form for the petition, which shall be published on the
223 Building Code Information System. The form shall, at a minimum,
224 require the following:

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

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

231 c. The name, address, and telephone number of the
232 petitioner; the name, address, and telephone number of the
233 petitioner's representative, if any; and an explanation of how
234 the petitioner's substantial interests are being affected by the

235 | local interpretation of the Florida Building Code or the Florida
 236 | Accessibility Code for Building Construction.

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

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

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

249 | g. Space for the local building official to respond in
 250 | writing. The space shall, at a minimum, require the local
 251 | building official to respond by providing a statement admitting
 252 | or denying the statements contained in the petition and a
 253 | statement of the interpretation of the provisions of the Florida
 254 | Building Code or the Florida Accessibility Code for Building
 255 | Construction which the local jurisdiction or the local building
 256 | official contends is correct, including the basis for the
 257 | interpretation.

258 | 3. The petitioner shall submit the petition to the local
 259 | building official, who shall place the date of receipt on the
 260 | petition. The local building official shall respond to the

261 petition in accordance with the form and shall return the
 262 petition along with his or her response to the petitioner within
 263 5 days after receipt, exclusive of Saturdays, Sundays, and legal
 264 holidays. The petitioner may file the petition with the
 265 commission at any time after the local building official
 266 provides a response. If no response is provided by the local
 267 building official, the petitioner may file the petition with the
 268 commission 10 days after submission of the petition to the local
 269 building official and shall note that the local building
 270 official did not respond.

271 4. Upon receipt of a petition that meets the requirements
 272 of subparagraph 2., the commission shall immediately provide
 273 copies of the petition to a panel, and the commission shall
 274 publish the petition, including any response submitted by the
 275 local building official, on the Building Code Information System
 276 in a manner that allows interested persons to address the issues
 277 by posting comments.

278 5. The panel shall conduct proceedings as necessary to
 279 resolve the issues; shall give due regard to the petitions, the
 280 response, and to comments posed on the Building Code Information
 281 System; and shall issue an interpretation regarding the
 282 provisions of the Florida Building Code or the Florida
 283 Accessibility Code for Building Construction within 21 days
 284 after the filing of the petition. The panel shall render a
 285 determination based upon the Florida Building Code or the
 286 Florida Accessibility Code for Building Construction or, if the

287 code is ambiguous, the intent of the code. The panel's
288 interpretation shall be provided to the commission, which shall
289 publish the interpretation on the Building Code Information
290 System and in the Florida Administrative Register. The
291 interpretation shall be considered an interpretation entered by
292 the commission, and shall be binding upon the parties and upon
293 all jurisdictions subject to the Florida Building Code or the
294 Florida Accessibility Code for Building Construction, unless it
295 is superseded by a declaratory statement issued by the Florida
296 Building Commission or by a final order entered after an appeal
297 proceeding conducted in accordance with subparagraph 7.

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

303 7. Any substantially affected person may appeal an
304 interpretation rendered by a hearing officer panel by filing a
305 petition with the commission. Such appeals shall be initiated in
306 accordance with chapter 120 and the uniform rules of procedure
307 and must be filed within 30 days after publication of the
308 interpretation on the Building Code Information System or in the
309 Florida Administrative Register. Hearings shall be conducted
310 pursuant to chapter 120 and the uniform rules of procedure.
311 Decisions of the commission are subject to judicial review
312 pursuant to s. 120.68. The final order of the commission is

313 binding upon the parties and upon all jurisdictions subject to
 314 the Florida Building Code or the Florida Accessibility Code for
 315 Building Construction.

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

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

325
 326 This paragraph provides the exclusive remedy for addressing
 327 requests to review local interpretations of the Florida Building
 328 Code or the Florida Accessibility Code for Building Construction
 329 and appeals from review proceedings.

330 (d) Upon written application by any substantially affected
 331 person, contractor, or designer, or a group representing a
 332 substantially affected person, contractor, or designer, the
 333 commission shall issue or cause to be issued a formal
 334 interpretation of the Florida Building Code or the Florida
 335 Accessibility Code for Building Construction as prescribed by
 336 paragraph (c).

337 (e) Local decisions declaring structures to be unsafe and
 338 subject to repair or demolition are not subject to review under

339 | this subsection and may not be appealed to the commission if the
 340 | local governing body finds that there is an immediate danger to
 341 | the health and safety of the public.

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

351 | (g) The commission may designate a commission member who
 352 | has demonstrated expertise in interpreting building plans to
 353 | attend each meeting of the advisory council created in s.
 354 | 553.512. The commission member may vary from meeting to meeting,
 355 | shall serve on the council in a nonvoting capacity, and shall
 356 | receive per diem and expenses as provided in s. 553.74(3).

357 | (h) The commission shall by rule establish an informal
 358 | process of rendering nonbinding interpretations of the Florida
 359 | Building Code and the Florida Accessibility Code for Building
 360 | Construction. The commission is specifically authorized to refer
 361 | interpretive issues to organizations that represent those
 362 | engaged in the construction industry. The commission shall
 363 | immediately implement the process before completing formal
 364 | rulemaking. It is the intent of the Legislature that the

365 commission create a process to refer questions to a small,
 366 rotating group of individuals licensed under part XII of chapter
 367 468, to which a party may pose questions regarding the
 368 interpretation of code provisions. It is the intent of the
 369 Legislature that the process provide for the expeditious
 370 resolution of the issues presented and publication of the
 371 resulting interpretation on the Building Code Information
 372 System. Such interpretations shall be advisory only and
 373 nonbinding on the parties and the commission.

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

385 ~~(5) The commission may render declaratory statements in~~
 386 ~~accordance with s. 120.565 relating to the provisions of the~~
 387 ~~Florida Accessibility Code for Building Construction not~~
 388 ~~attributable to the Americans with Disabilities Act~~
 389 ~~Accessibility Guidelines. Notwithstanding the other provisions~~
 390 ~~of this section, the Florida Accessibility Code for Building~~

391 ~~Construction and chapter 11 of the Florida Building Code may not~~
 392 ~~be interpreted by, and are not subject to review under, any of~~
 393 ~~the procedures specified in this section. This subsection has no~~
 394 ~~effect upon the commission's authority to waive the Florida~~
 395 ~~Accessibility Code for Building Construction as provided by s.~~
 396 ~~553.512.~~

397 Section 7. Subsections (11) through (18) of section
 398 553.79, Florida Statutes, are renumbered as subsections (12)
 399 through (19), respectively, and a new subsection (11) is added
 400 to that section to read:

401 553.79 Permits; applications; issuance; inspections.—

402 (11) The local enforcing agency may not issue a building
 403 permit to construct, develop, or modify a public swimming pool
 404 without proof of application for an operating permit under s.
 405 514.031. A certificate of completion or occupancy shall not be
 406 issued until such operating permit is issued.

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

409 553.841 Building code compliance and mitigation program.—

410 (1) The Legislature finds that knowledge and understanding
 411 by persons licensed or employed in the design and construction
 412 industries of the importance and need for complying with the
 413 Florida Building Code and related laws is vital to the public
 414 health, safety, and welfare of this state, especially for
 415 protecting consumers and mitigating damage caused by hurricanes
 416 to residents and visitors to the state. The Legislature further

417 finds that the Florida Building Code can be effective only if
 418 all participants in the design and construction industries
 419 maintain a thorough knowledge of the code, code compliance and
 420 enforcement, duties related to consumers, and changes that
 421 ~~additions thereto which~~ improve construction standards, project
 422 completion, and compliance of design and construction to protect
 423 against consumer harm, storm damage, and other damage.
 424 Consequently, the Legislature finds that there is a need for a
 425 program to provide ongoing education and outreach activities
 426 concerning compliance with the Florida Building Code, the
 427 Florida Fire Prevention Code, construction plan and permitting
 428 requirements, construction liens, and hurricane mitigation.

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

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

445 553.883 Smoke alarms in one-family and two-family
 446 dwelling and townhomes.—A one-family and two-family dwelling
 447 and townhome undergoing a repair, or an alteration level 1 as
 448 defined in the Florida Existing Building Code, may use a smoke
 449 alarm powered by a 10-year nonremovable, nonreplaceable battery
 450 in lieu of retrofitting such dwelling with a smoke alarm powered
 451 by the dwelling's electrical system. Effective January 1, 2015,
 452 a battery-powered smoke alarm that is newly installed or
 453 replaces an existing battery-powered smoke alarm must be powered
 454 by a nonremovable, nonreplaceable battery that powers the alarm
 455 for at least 10 years.

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

458 553.993 Definitions.—For purposes of this part:

459 (3) "Building energy-efficiency rating system" means a
 460 whole building energy evaluation system that provides a reliable
 461 and scientifically-based analysis of a building's energy
 462 consumption or energy features and allows comparison to similar
 463 building types in similar climate zones where applicable.
 464 Specifically, the rating system shall use standard calculations,
 465 formulas, and scoring methods; be applicable nationally; compare
 466 a building to a clearly defined and researched baseline or
 467 benchmark; require qualified professionals to conduct the rating
 468 or assessment; and provide a labeling and recognition program

469 with specific criteria or levels. Residential program benchmarks
470 for new construction shall be consistent with national building
471 standards. Residential building program benchmarks for existing
472 construction shall be consistent with national home energy
473 rating standards. The building energy-efficiency rating system
474 shall require at least one level of oversight performed by an
475 organized and balanced group of professionals with subject
476 matter expertise in energy efficiency, energy rating, and
477 evaluation methods established by the Residential Energy
478 ~~Services Network, the Commercial Energy Services Network, the~~
479 ~~Building Performance Institute, or the Florida Solar Energy~~
480 ~~Center.~~

481 Section 11. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 593 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations
2 Appropriations Subcommittee
3 Representative Eagle offered the following:
4

5 **Amendment**

6 Remove lines 149-155 and insert:
7 Compliance and Mitigation Program under s. 553.841. Funds
8 allocated to the Florida Building Code Compliance and Mitigation
9 Program shall be \$925,000 each fiscal year. The funds collected
10 from the surcharge may not be
11

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 773 Pugilistic Exhibitions
SPONSOR(S): Business & Professional Regulation Subcommittee; Hutson
TIED BILLS: HB 775 **IDEN./SIM. BILLS:** SB 810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Brown-Blake	Luczynski
2) Government Operations Appropriations Subcommittee		Topp	Topp BDT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill amends various provisions of ch. 548, F.S., to update language with industry standards and ensure licensees are provided with adequate due process. Specifically, the bill:

- Provides, modifies, and eliminates definitions relating to the Florida Boxing Commission (Commission).
- Amends and clarifies the duties of the Commission's executive director.
- Eliminates the requirement that the Commission record all of its scheduled proceedings.
- Clarifies that the Commission has exclusive jurisdiction over amateur mixed martial arts matches held in the state.
- Creates new exemptions from ch. 548, F.S., and clarifies existing exemptions.
- Eliminates the requirement that concessionaires, foreign copromoters, and booking agents be licensed, and eliminates references to responsibilities related to concessionaries.
- Provides that the failure or refusal to provide a urine sample, or the positive result of a urine test, constitutes an immediate serious danger to the health, safety, and welfare of the public and participants and results in the immediate suspension of the participant's license.
- Requires the Commission to hold purse forfeiture hearings pursuant to the Administrative Procedure Act.
- Redefines how the Commission is to determine "gross receipts."
- Permits promoter to apply to the Commission for authorization to issue more than five percent of seats in the house as complimentary tickets and not be included in gross receipts for post-event taxation purposes.
- Requires that the promoter keep a copy of certain records for a period of one year.
- Provides that compliance with the requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit and that the Commission has the right to audit a promoter's books and records, upon reasonable notice.
- Directs the Commission to adopt rules to establish a procedure for auditing a promoter's records and for resolving any inconsistencies revealed in the audit.
- Directs the Commission to establish rules for imposing late fees in the event of taxes owed.
- Provides an emergency license suspension procedure.
- Provides that all hearings held under chapter 548, F.S., be held in accordance with the Administrative Procedure Act.
- Appropriates \$111,000 from the General Revenue Fund to implement provisions of the bill.

The bill is anticipated to have a significant reduction in revenues to the Florida Boxing Commission due to deregulation of concessionaires and booking agents, and lower post-event tax payments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The function of the Florida State Boxing Commission is to license and regulate professional boxing, kickboxing and mixed martial arts. The Commission is also responsible for the approval of amateur boxing, kickboxing and mixed martial arts sanctioning organizations.¹ The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules. Further, the Commission makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants.² The Commission office regulates professional boxing, kickboxing, and mixed martial arts matches by designating employees to attend the matches, appointing match officials, and ensuring the matches are held in a safe and fair manner.

Additionally, the Commission approves amateur sanctioning organizations to sanction amateur matches and establishes health and safety standards for the amateur sanctioning organizations to enforce. Approved amateur sanctioning organizations are required to sanction and supervise any amateur boxing, kickboxing, or mixed martial arts matches held in the state of Florida.³ The Commission does not attend or directly regulate the amateur matches.

The Commission is appointed by the Governor, and consists of five members.⁴ It collects revenue via license issuance, live event permit fees, and taxation on gross receipts associated with live events in the state.⁵

Current Situation

Definitions

Section 548.002, F.S., sets forth various definitions that apply to ch. 548, F.S. Of these definitions, several are ambiguous, difficult to enforce or understand, or do not reflect current industry standards.

Duties of the Executive Director

Currently, s. 548.004(1), F.S., specifies the duties and responsibilities required to be performed by the executive director of the Commission. Specifically, the executive director must:

- Keep a record of all proceedings of the Commission.
- Preserve all books, papers, and documents pertaining to the business of the Commission.
- Prepare any notices and papers required.
- Appoint judges, referees, and other officials as delegated by the Commission and pursuant to ch. 548, F.S., and the rules of the Commission.
- Perform any other duties as the Department or Commission directs.

The executive director may issue subpoenas and administer oaths pursuant to this section.

¹ Department of Business and Professional Regulation, Florida State Boxing Commission, *Boxing Commission FAQs*, available at http://www.myfloridalicense.com/dbpr/pro/sbc/documents/box_faq.pdf (last viewed March 4, 2014).

² Florida State Boxing Commission Annual Report, Fiscal Year 2011-2012, p. 5, available at https://www.google.com/url?q=http://www.myfloridalicense.com/dbpr/os/news/Boxing10_17_12.html&sa=U&ei=vfoVU-X3CsPW2AWps4D4Cw&ved=0CAYQFjAA&client=internal-uds-cse&usg=AFQjCNF-2nwl6jibOo9m4VuSq-Q1wUTHw (last viewed March 4, 2014).

³ Section 548.0065(1), F.S.

⁴ Section 548.003(1), F.S.

⁵ See *supra* note 2.

Rule 61K1-1.0025, F.A.C., provides the executive director's responsibilities when carrying out the duties of his or her office. Specifically, the executive director shall:

- Perform all administrative functions to ensure that the Commission operates and conducts its business in a lawful manner.
- Be the custodian of records for the Commission.
- Ensure that proper notice and recording is made of all meetings of the Commission.
- Attend all meetings of the Commission.
- Tentatively approve or deny licenses and permits according to the provisions of ch. 548, F.S., and the rules adopted by the Commission.
- Be present at all matches and act as the Commission representative in charge or, in the executive director's absence, appoint an assistant executive director or an employee or staff member of the Commission to be the Commission representative in charge.
- Ensure that all matches are conducted in accordance with the provisions of ch. 548, F.S., and the rules adopted by the Commission.
- Issue or cause to be issued administrative complaints and citations as set forth herein.
- Have the authority to affix the executive director's signature to documents which attest to or represent official Commission action.

Electronic Recording of Commission Proceedings

Currently, s. 548.004(2), F.S., requires that the Commission electronically record all of its scheduled proceedings. Rule 61K1-1.0025, F.A.C., requires that the executive director ensure that proper recording is made of all meetings of the Commission.

Pursuant to s. 120.54(4), F.S., the Administration Commission adopted the Uniform Rules regarding the procedures necessary for the implementation of the Administrative Procedures Act. Rule 28-106.214, F.A.C., of the Uniform Rules, applies to all hearings involving disputed issues of material fact. It requires that all such hearings shall be recorded by a certified court reporter or by recording instruments. Additionally, Rule 28-106.306, F.A.C., which applies to all hearings not involving disputed issues of material fact, provides that the same requirements be met for hearings not involving disputed issues of material fact.

Commission Jurisdiction

Section 548.006, F.S., is titled "Power of commission to control professional and amateur pugilistic contests and exhibitions." The term "pugilist" is not defined in Florida Statutes. A dictionary definition of "pugilist" is "a person who fights with the fists; a boxer, usually a professional."⁶

Section 548.006(1), F.S., provides that "[t]he commission has exclusive jurisdiction over every match held within the state which involves a professional." "Match" is defined as "any contest or exhibition."⁷ "Contest" is defined as "a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive earnestly to win using, but not necessarily limited to, strikes and blows to the head."⁸ "Exhibition" is defined as "a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using, but not necessarily, being limited to, strikes and blows to the head." Therefore, the Commission has jurisdiction over all boxing, kickboxing, and mixed martial arts matches involving a professional.

Additionally, s. 548.006(3), F.S., provides the Commission with exclusive jurisdiction over the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing and kickboxing matches held within the state. In 2008, s. 548.0065,

⁶ Dictionary.com definition of pugilist, available at <http://dictionary.reference.com/browse/pugilistic?s=t> (last viewed March 3, 2014).

⁷ Section 548.002(14), F.S.

⁸ Section 548.002(6), F.S.

F.S., was amended to include amateur mixed martial arts within the Commission's exclusive jurisdiction;⁹ however, the reference to "mixed martial arts" was inadvertently omitted from s. 548.006(3), F.S., which defines the scope of the Commission's jurisdiction related to professional and amateur contests and exhibitions.

Exemptions from Ch. 548, F.S.

Presently, s. 548.007, F.S., provides that ch. 548, F.S., does not apply to:

- A match conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program.
- A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to participants who are members of the Florida National Guard.
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.

Licensure of Foreign Copromoters and Promoters

Section 548.013, F.S., provides for the licensure of foreign copromoters. Section 548.002(10), F.S., defines foreign copromoters as "a promoter who has no place of business within this state."

Section 548.002(20), F.S., defines promoter as "any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional." Section 548.012, F.S., provides for the licensure of promoters.

Chapter 548, F.S., does not require that promoters be located within the state of Florida. As a result, the Commission has licensed all individuals and entities that apply for licensure as a promoter as a promoter, regardless of whether they have a place of business in Florida. Therefore, the Commission does not have any licensed foreign copromoters.

Presently, s. 548.017, F.S., provides for the licensure of many individuals who are directly or indirectly acting in specific capacities in connection with any match involving a participant. Specifically, the chapter requires that the following be licensed:

- Participants
- Managers
- Trainers
- Seconds
- Timekeepers
- Referees
- Judges
- Announcers
- Physicians
- Matchmakers
- Concessionaires
- Booking agents

Promoters are not included in this section, although s. 548.012, F.S., requires licensure for promoters.

Licensure of Concessionaires

As mentioned above, s. 548.017, F.S., provides for the licensure of many individuals who are directly or indirectly acting in specific capacities in connection with any match involving a participant, including concessionaires. Florida is one of two states in the nation that license concessionaires.

Licensure of Booking Agents

Booking agents are required to be licensed pursuant to s. 548.017, F.S.; however, booking agents are not mentioned elsewhere in ch. 548, F.S.

Revocation and Suspension Procedures

Section 548.046(3)(c), F.S., provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participant's license. The statute does not provide for a process for the aggrieved licensee to petition the Commission for a hearing to review the license revocation.

Article I, Section 9 of the Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law..." Specifically, substantive due process protects a person's property from unfair governmental interference, unwarranted encroachment or taking. The test to be applied in determining whether a statute violates due process is whether the statute bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare, and is not discriminatory, arbitrary or oppressive.¹⁰

Additionally, the 14th Amendment to the United States Constitution declares that no state "shall deprive any person of life, liberty, or property, without due process of law." The essential elements of due process of law are notice, an opportunity to be heard, and to defend in an orderly proceeding before a tribunal having jurisdiction of the cause.¹¹

The Third District Court of Appeal of Florida has previously found that "[t]he Department of Professional Regulation, as well as the specific professional boards coming under its purview, must remember that the suspension of a license which is essential in the pursuit of livelihood involves state action. Such licenses may not be revoked or suspended without procedural due process."¹²

As stated above, s. 548.046(3)(c), F.S., provides for summary revocation of a license without the opportunity to be heard and defend in a proceeding. Licenses are generally considered a form of property, and as such, licensees are to be afforded appropriate due process prior to depriving them of their licensure. A court may find that the licensee is being deprived of his or her property without due process of law under s. 548.046(3)(c), F.S. Moreover, it is unclear whether a court would find that the revocation is rationally related to protecting the public's health, safety, or general welfare. As such, the revocation, without a prior hearing, may be a violation of the licensee's constitutional right to due process.

Withholding of Purses

Section 548.054, F.S., provides the procedure to be followed in the event that a prize purse is withheld. Specifically, a member of the Commission, a Commission representative, or the referee may order a promoter to surrender any purse or other funds payable to a participant if it appears that:

¹⁰ Chicago Title Ins. Co. v. Butler, 770 So. 2d 1210, 1214-15 (Fla. 2000).

¹¹ State ex. Rel. Munch v. Davis, 143 Fla 236, 196 So. 491 (1940).

¹² Robinson v. Florida Bd. Of Dentistry, Dept. of Regulation, Div of Professions, 447 So.2d 930 (1984).

- The participant is not competing honestly, or is intentionally not competing to the best of his or her ability and skill in a match represented to be a contest.
- The participant, his or her manager, or any of the participant's seconds has violated ch. 548, F.S.

In the event that a purse is withheld, the purse must be delivered to the Commission by the promoter. Within ten days after the match, the person from whom the sum was withheld may apply to the Commission for a hearing, in writing. Upon receipt of the application, the Commission must set the date for a hearing; within ten days after the hearing or after ten days following the match, if no application for a hearing is filed, the Commission is required to meet and determine the disposition to be made of the withheld purse.

If the Commission finds the charges sufficient, it may decide that all or a part of the funds be forfeited. Conversely, if the Commission does not find the charges sufficient, it must distribute the withheld funds immediately.

The provisions for withholding and disposition of withheld purses provide licensees with an opportunity to be heard and thus provide for due process; however, it does not comply with the hearing processes provided for under the Administrative Procedures Act (APA). The APA provides the Department and all agencies and boards under it, including the Commission, with procedures governing Commission meetings, hearings, and other methods by which licensees may be afforded access to regulatory bodies.

Calculation of Gross Receipts

Section 548.06, F.S., requires that, within 72 hours after a match, the promoter of a match file a written report with the Commission. The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.

The written report shall be accompanied by a post-event tax payment in the amount of five percent of the total gross receipts, exclusive of any federal taxes; however, the post-event tax payment derived from the gross price charged for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.

For the purposes of ch. 548, F.S., "gross receipts" is defined as:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges.
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.
- The face value of all tickets sold and complimentary tickets issued, provided, or given.
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.

In 2012, the legislature repealed s. 548.061, F.S., which required each person or club that holds or shows any boxing match on a closed circuit telecast that is viewed within the state to file a written report with the Commission. The provision applied to "pay-per-view"-type events, regardless of whether the match originated inside or outside of the state. Further, s. 548.061, F.S., provided that, within 72 hours of the telecast, the person or club pay the Commission a tax of five percent of its total gross receipts from the sale of the tickets, similar to the promoter's tax liability for gross receipts.

On occasion, promoters issue complimentary tickets to individuals or entities. Most of the time, these complimentary tickets are issued close to the time of the event when the seats are not sold out and the promoter has empty seats he or she wishes to fill. The promoter will issue the complimentary tickets in

order to fill the seats and increase the concessions he or she sells to the individuals who receive the complimentary tickets. The Commission currently includes these complimentary tickets in gross receipts and receives a five percent tax on the value of the ticket for each complimentary ticket issued.

Promoter Records Requirements

As discussed above, within 72 hours after a match, the promoter of that match must file a written report with the Commission, which includes information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.¹³

Chapter 548, F.S., does not require the promoter to retain records in relation to the filing of the written report. Additionally, ch. 548, F.S., does not provide for an audit of promoters' records by the Commission.

Commission Hearings

Presently, s. 548.073, F.S., provides that any member of the Commission may conduct a hearing. Additionally, before any adjudication is rendered, a majority of the Commission must examine the record and approve the adjudication and order. This language also does not provide for a hearing process and does not require the Commission to comply with the requirements under the APA. Due to the lack of statutory direction relating to hearing requirements, there is a potential that the licensees' due process rights could be violated.

Effect of the Bill

Definitions

The bill amends s. 548.002, F.S., to provide definitions or redefine terms to clarify legislative intent, ensure the Department is able to enforce ch. 548, F.S., and to conform the chapter to current industry standards. The bill defines or redefines the terms:

- "Boxing" is defined as the unarmed combat sport of fighting by striking with the fists.
- "Contest" is defined as a boxing or kickboxing, or mixed martial arts engagement in which persons participating strive to win using strikes and blows to the head or other full-contact maneuvers.
- "Exhibition" is defined as a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using strikes and blows to the head or other full-contact maneuvers.
- "Face value" is defined as the dollar value of a ticket equal to the dollar amount that a customer is required to pay or, for complimentary tickets, would have been required to pay to purchase a ticket with equivalent seating priority in order to view the event. If the ticket specifies the amount of admission charges attributable to state or federal taxes, such taxes are not included in the face value.
- "Full contact" is defined as the use of blows and strikes during a match which: 1) are intended to break the plane of the receiving participant or amateur's body, 2) are delivered to the head, face, neck, or body of the receiving participant or amateur, and 3) cause the receiving participant or amateur to move in response to the strike or blow.
- "Judge" is defined as a person licensed by the Commission who evaluates and scores a match using a designated scoring system.
- "Kickboxing" is defined as the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination thereof. The term does not include any form of ground fighting techniques.

¹³ Section 548.06, F.S.

- “Mixed martial arts” is defined as the unarmed combat sport involving the use of a combination techniques, including, but not limited to, grappling, kicking, striking, and using techniques from different disciplines of the martial arts, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling.
- “Physician” is defined means a person who is approved by the Commission and licensed to practice medicine under ch. 458 or ch. 459, and whose license is unencumbered and in good standing.
- “Promoter” is defined as a person or entity, including an officer, director, trustee, partner, or owner of a corporate promoter or promoter partnership, who produces, arranges, or stages a match involving a professional.
- “Purse” is defined as the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional’s share of any payment received for radio broadcasting and television, including pay-per-view or closed circuit.
- “Second” or “cornerman” is defined as a person who assists a participant in preparing for a match and between rounds, and who maintains the corner of a participant during the match.
- “Unarmed combat” is defined as a form of competition in which a strike or blow is struck which may reasonably be expected to inflict injury.

In addition, the bill amends provisions of s. 548.002, F.S., to eliminate the terms “concessionaire” and “foreign copromoter”.

Duties of the Executive Director

The bill amends s. 548.004(1), F.S., to modify the duties and responsibilities to be performed by the executive director of the Commission, as set forth by the Commission. Pursuant to the provisions of the bill, the executive director must:

- Conduct the functions of the Commission office.
- Appoint event and Commission officials.
- Approve licenses, permits, and matches.
- Perform other duties as the Department or Commission deems necessary to fulfill the duties of the position.

Furthermore, the executive director’s previous ability to issue subpoenas and administer oaths is narrowed to witnesses, permitholders, record custodians, and licensees. The bill language is meant to clarify the authority by which the executive director may act while conducting the business of the Commission.

Electronic Recording of Commission Proceedings

The bill amends s. 548.004(2), F.S., to eliminate the requirement that the Commission record all of its scheduled proceedings. As stated above, the requirement is already codified in ch. 120 F.S., and the Florida Administrative Code.

Commission Jurisdiction

The bill amends the title of s. 548.006, F.S., to clarify the Commission’s existing jurisdiction over professional and amateur boxing, kickboxing, and mixed martial arts matches as well as amateur mixed martial arts matches held in the state.

As with boxing and kickboxing, this jurisdiction clarifies that the Commission has oversight over the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for mixed martial arts matches held in Florida. Nothing in the bill affects the

Commission's exclusive jurisdiction over amateur sanctioning organizations for amateur boxing and kickboxing matches held within the state.

Exemptions from Ch. 548, F.S.

The bill amends s. 548.007, F.S., to clarify existing exemptions to ch. 548, F.S., as well as create new exemptions from ch. 548, F.S. The exemptions include:

- A match that does not allow full contact, if the match is limited to amateurs.
- A match conducted or sponsored by a company or detachment of the Florida National Guard or the United States Armed Forces, if the match is limited to amateurs who are members of a company or detachment of the Florida National Guard or United States Armed Forces.
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateurs and is held in conjunction with a charitable event.
- A match conducted by or between a public postsecondary education institution or public K-12 school as defined in s. 1000.04, F.S., if the match is limited to amateurs who are members of a school-sponsored club or team.
- A match conducted by the International Olympic Committee, the International Paralympic Committee, the Special Olympics, or the Junior Olympics, if the match is limited to amateurs who are competing in or attempting to qualify for the Olympics, Paralympics, Special Olympics, or Junior Olympics.
- A professional or amateur "martial arts activity."

The bill defines "martial arts," as it applies in s. 548.007(6), F.S., as one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination, including, but not limited to, karate, aikido, judo, and kung fu. The term does not include "mixed martial arts."

The bill eliminates the exemption found in s. 548.007(1), F.S., which relates to a bona fide non-profit school or education program whose primary purpose is instruction in the martial arts, boxing, or kickboxing, if the match held, in conjunction with the instruction, is limited to amateur participants who are students of the school or instructional program. Instead, that exemption is replaced by s. 548.007(6), F.S., which encompasses a larger group of businesses and individuals.

Licensure of Foreign Copromoters and Promoters

The bill repeals s. 548.013, F.S., to eliminate the requirement that foreign copromoters be licensed by the Commission. Foreign copromoters are promoters with their licenses located outside of the state of Florida. The Commission issues licenses to promoters, regardless of the location of their licensure, and therefore has no licensed foreign copromoters. The bill further removes references to foreign copromoters found in ss. 548.014 and 548.052, F.S.

Additionally, the bill adds promoters to the list of individuals or entities who directly or indirectly act in specific capacities in connection with any match involving a participant and who are required to obtain a license under s. 548.017, F.S.

Licensure of Concessionaires

The bill amends s. 548.017(1), F.S., to eliminate the requirement that concessionaires be licensed by the Commission. As such, a concessionaire may directly or indirectly act in such capacity, in connection with any match involving a participant, without the need to be licensed by the Department. Additionally, the bill repeals s. 548.015, F.S., requiring concessionaires meet bonding requirements.

Licensure of Booking Agents

The bill amends s. 548.017, F.S., to eliminate the requirement that booking agents be licensed by the Commission. Booking agents are not mentioned elsewhere in ch. 548, F.S.

Revocation and Suspension Procedures

The bill amends 548.046(3)(c), F.S., to provide that the failure or refusal to provide a urine sample immediately upon request, constitutes as an immediate serious danger to the health, safety, or welfare of the public and his or her opponent. This results in the immediate suspension of the participant's license, rather than a revocation of that license.

Section 120.60(6), F.S., provides that if the [Commission] finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:

- The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
- The [Commission] takes only that action necessary to protect the public interest under the emergency procedure; and
- The [Commission] states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The [Commission's] findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57, shall also be promptly instituted and acted upon.

Therefore, the amendment provides due process to the participant by providing notice, an opportunity to be heard, and an opportunity to defend. Moreover, the failure or refusal constitutes grounds for additional disciplinary action.

Moreover, the bill creates s. 548.046(3)(d), F.S., to provide that a licensee who tests positive for any of the prohibited substances designated by the Commission is considered an immediate serious danger to the health, safety, and welfare of the public and his or her opponent. As such, as discussed before, the positive test results in the immediate suspension of the participant's license, and constitutes grounds for additional disciplinary action.

The bill amends s. 548.07, F.S., to set forth the procedure to be followed in the event of an immediate license suspension. Specifically, the Commission, the executive director or his or her designee may issue an emergency suspension of license order pursuant to s. 120.60(6), F.S., to any person who is licensed under ch. 548, F.S., and who poses an "immediate, serious danger to the health, safety, and welfare of the public or the participants in a match."

The bill provides that the Department's Office of General Counsel is required to review the grounds for each emergency suspension order issued, and must file an administrative complaint against the licensee within 21 days after the issuance of the emergency suspension order. Service of the administrative complaint must be pursuant to the procedures set forth in s. 455.275, F.S., which is the standard process used by the Department when processing disciplinary complaints. Following service, the disciplinary process must proceed in accordance with the Administrative Procedure Act.

With this procedure, a court is more likely to find that the emergency suspension procedure does not violate the licensees' due process rights, as the emergency suspension is rationally related to safeguarding public health, safety, or general welfare, as the use of drugs in one of more of the participants is likely a danger to the health and/or safety of either the drug-using participant or his or her

opponent. Moreover, within 21 days after the suspension, the licensee is provided a hearing process in order to petition the Commission.

Withholding of Purses

The bill amends s. 548.054, F.S., to provide that within 10 days after the match, a person who has had a purse withheld is entitled to submit a petition for a hearing to the Commission pursuant to s. 120.569, F.S. Additionally, the bill requires the Commission to hold the hearing pursuant to ss. 120.569 and 120.57, F.S. This clarifies and ensures that the purse forfeiture hearing is held pursuant to the licensee's constitutionally-protected right of due process.

Calculation of Gross Receipts

The bill amends s. 548.06(1), F.S., to provide that gross receipts includes

- The gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida. In effect, this provision reinstates a form of the "pay-per-view" tax for in-state matches, which was eliminated in 2012.
- The face value of all tickets sold and complimentary tickets issued, provided, or given above five percent of the seats in the house and not authorized by the Commission.
- The face value of any seat or seating issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promoter of an event.

The bill eliminates s. 548.06(1)(b), F.S., which removes receipts from concessions from gross receipts. As such, receipts from concessions are not included when determining the gross receipts of a match.

The bill removes the provision which provides that a person who owns, purchases, acquires, or holds the rights to telecast a match or matches held in Florida with the intent to sell or otherwise extend to another person, must become licensed as a promoter and submit corresponding reports and post-event taxes for the sale or extension of such rights. Moreover, the bill eliminates s. 548.06(3), F.S., which requires concessionaires to provide a written report documenting the amount of gross receipts and other information within 72 hours of a match.

The bill amends s. 548.06, F.S., to permit promoters to issue, provide, or give complimentary tickets for up to five percent of the seats in the house without including the tickets in the gross receipts and without paying corresponding post-event taxes on them. This does not limit the number of complimentary tickets that may be given. It merely permits promoters to avoid including the tickets in the gross receipts and paying the corresponding post-event taxes on the complimentary tickets it issues up to five percent of the seats in the house.

The promoter may request the Commission's authorization to issue, provide, or give more than five percent of the seats in the house as complimentary tickets without including the tickets in the gross receipts and paying the corresponding post-event taxes under certain circumstances. If the Commission authorizes more than five percent be issued, provided, or given, the Commission may not consider the complimentary tickets it authorizes as part of the total gross receipts. The Commission, the executive director, or his or her designee may authorize more than five percent of the tickets be issued as complimentary tickets to the following:

- Reserve or active members of the U.S. Armed Forces or National Guard.
- A veteran as defined in s. 1.01(14), F.S.
- Not-for-profit organizations with tax-exempt status pursuant to 26.U.S.C. s. 501(c)(3), of the United States Internal Revenue Code.

The Commission, executive director, or his or her designee may deny or approve the request, and may approve all or a portion of the requested percentage above the five percent of seats in the house.

If the promoter does not obtain the Commission's authorization or wishes to issue more than the Commission authorizes, he or she may do so, but the promoter shall include any complimentary tickets issue, provided, or given above the authorized amount in the total gross receipts and the promoter must pay the corresponding post-event taxes.

The bill provides for application requirements and documentation retention requirements. The application must be submitted no less than two business days prior to the event, and on a form adopted by the Commission. The promoter is responsible for maintaining documenting that the complimentary tickets were issued, provided, or given to the individuals or entities listed on the application as the recipients. The Commission shall provide the response in writing no less than one business day prior to the event, along with an explanation for the approval or denial.

Finally, the bill removes the reporting requirements for the sale or lease of broadcasting, television, and pay-per-view rights of any match held in Florida, if the promoter pays the maximum tax of \$40,000 for a single event.

Promoter Record Requirements

The bill creates s. 548.06(6), F.S., to require that the promoter keep a copy of certain records for a period of one year and provide the records to the Commission upon request. Such records include:

- Records necessary to justify and support each report submitted to the Commission.
- A copy of the independently-prepared ticket manifest.
- Documentation verifying the issuance of complimentary tickets approved by the Commission.

Moreover, the bill creates s. 548.06(7), F.S., which provides that compliance with the above requirements, as well as all requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit, provided that the Commission provides reasonable notice to the promoter of the inspection.

Finally, the bill creates s. 548.06(8), F.S., to direct the Commission to adopt rules establishing a procedure for auditing a promoter's records and for resolving any inconsistencies revealed in the audit. The Commission must also adopt rules imposing late fees in the event of taxes owed. These changes are meant to help increase the level of oversight of the Commission over the financial interests of the promoters.

Commission Hearings

The bill amends s. 548.073, F.S., to provide that all hearings held under ch. 548, F.S., must be held in accordance with the Administrative Procedure Act. This helps to ensure that all hearings held by the Commission are conducted in an open manner, with due process to licensees.

B. SECTION DIRECTORY:

Section 1 amends s. 548.002, F.S., revising definitions.

Section 2 amends s. 548.004, F.S., revising the duties and responsibilities of the executive director of the Florida State Boxing Commission.

Section 3 amends s. 548.006, F.S., clarifying the Commission's jurisdiction.

Section 4 amends s. 548.007, F.S., providing exemptions to ch. 548, F.S.

Section 5 repeals s. 548.013, F.S., relating to foreign copromoter license requirements.

Section 6 amends s. 548.014, F.S., deleting references to foreign copromoters.

Section 7 repeals s. 548.015, F.S., relating to the authority of the Commission to require a concessionaire to file a form of security with the Commission.

Section 8 amends s. 548.017, F.S., deleting a requirement for the licensure of a concessionaire and booking agent.

Section 9 amends s. 548.046, F.S., providing for immediate license suspension and other disciplinary action for refusal or failure to provide a urine sample or testing positive for a prohibited drug.

Section 10 amends s. 548.052, F.S., deleting references to foreign copromoters.

Section 11 amends s. 548.054, F.S., revising procedures and requirements for requesting a hearing following the withholding of a purse.

Section 12 amends s. 548.06, F.S., modifying reporting and post-event taxation requirements and providing for complimentary tickets to be issued with authorization by the Commission without being included in gross receipts.

Section 13 amends s. 548.07, F.S., revising the procedure for suspension of licensure.

Section 14 amends s. 548.073, F.S., requiring that Commission hearings be held in accordance with ch. 120, F.S.

Section 15 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Late Fees

The bill directs the Commission to adopt a rule imposing a late fee on taxes owed the Commission. Any revenue collections based on imposing a late fee on post-event taxes are expected to be insignificant.

The Commission estimated in 2013 that had a late fee been imposed in FY 2011-12, the fee revenues collected would have been approximately \$6,915.¹⁴ The fee revenue estimate is based on total post-event taxes collected of \$115,258, a 10% penalty imposed, with 60% of estimated tax reports being filed late. The Commission indicated with the implementation of accountability measures in 2013, the amount of post-event tax collections which are filed late, will likely decline in future years, thereby reducing any late fee revenues from the estimated FY 2011-12 collection amount.

Pay-Per-View Tax

The bill provides that gross receipts includes the gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida. As discussed above, the bill effectively reinstates part of the "pay-per-view tax" for in-state matches,

¹⁴ Department of Business and Professional Regulation, Estimated post-event tax penalties for late fees, correspondence with staff of the Government Operations Appropriations Subcommittee, March 14, 2013, (on file with Business & Professional Regulation Subcommittee).

which was eliminated in 2012. However, the bill only reinstates the tax on matches held within the state of Florida, rather than taxing pay-per-view for matches held outside of Florida.

The Commission indicated in 2013 that pay-per-view matches occurring within the state of Florida generated \$1,484 in FY 2009-10 and \$2,138 in FY 2010-11.¹⁵ The expected fiscal impact of this tax reinstatement is positive, but indeterminate at this time.

Deregulation of Booking Agents:

The bill provides that booking agents and concessionaires would no longer need to obtain licensure from the Commission in order to practice in their field. The Department estimates a reduction in revenue from loss of licensure fee for booking agents to total approximately \$150 per year.¹⁶ This loss will be due to the lack of individuals paying licensure fees for licensure as booking agents.

Concessions

The bill removes concessions from gross receipts, providing that promoters do not have to pay five percent post-event tax for the sale of concessions. Additionally, the bill deregulates concessionaires. The Department estimated a reduction to post-event taxes related to concessions of approximately \$60,000 per year.¹⁷ Furthermore, the Department estimates a reduction in revenue from loss of licensure fees for concessionaires to total approximately \$600 per year.¹⁸

Complimentary Tickets

The bill provides that complimentary tickets for up to five percent of the seating capacity of the house are not included in gross receipts or the corresponding post-event taxes. The Department estimates, based on a review of prior year data, the Commission would collect \$40,000 less in post-event taxes related to the issuance of complimentary tickets.¹⁹ The Department's estimation is based on the assumption that promoters would not issue complimentary tickets in excess of that percentage. The Department did not provide an estimate to cover any complimentary tickets granted over the five percent permitted by statute if the promoter obtains authorization from the Commission to issue more.

As mentioned previously, promoters often issue complimentary tickets when the tickets have not sold prior to the event in order to recoup some cost through the sales of concessions to the individuals who receive the complimentary tickets. Often the complimentary tickets issued would never have sold prior to the event date. The Commission would not have included the unsold tickets in the gross receipts and would not have received the five percent post-event tax for the sale of the tickets.

¹⁵ Department of Business and Professional Regulation, total revenue from pay-per-view matches occurring within the state of Florida, FY 2009-10 and 2010-11, correspondence with staff of the Business & Professional Regulation Subcommittee, March 7, 2014, (on file with Business & Professional Regulation Subcommittee).

¹⁶ Department of Business and Professional Regulation, total revenue from licensure of booking agents FY 2011-2012, correspondence with staff of the Business & Professional Regulation Subcommittee, March 6, 2014, (on file with Business & Professional Regulation Subcommittee).

¹⁷ 2014 Department of Business and Professional Regulation, *Legislative Bill Analysis*, SB 810, Pugilistic Exhibitions, pg. 9, (on file with Business & Professional Regulation Subcommittee).

¹⁸ Department of Business and Professional Regulation, total revenue from licensure of concessionaires FY 2011-2012, correspondence with staff of the Business & Professional Regulation Subcommittee, March 6, 2014, (on file with Business & Professional Regulation Subcommittee).

¹⁹ *Id.*

Total Loss of Revenue

The Department anticipates a loss in taxation and licensure fee revenue of \$100,750.²⁰ In addition, as a result of the estimated \$100,750 reduction in taxes and license fees, there will be an \$8,060 annual reduction in the service charge to the General Revenue Fund.²¹

The current bill appropriates \$111,000 in recurring funds from the General Revenue Fund to offset this expected revenue loss and to ensure the Commission's budget is fully funded in the upcoming fiscal year.

2. Expenditures:

In 2013, CS/HB 1067 presented similar language with regards to fiscal impact on state expenditures. The proposed committee substitute bill language more closely resembles CS/HB 1067 than the originally filed bill. Based on the 2013 Departmental Bill Analysis of HB 1067, the bill is not anticipated to have a fiscal impact on state expenditures. The 2014 Departmental Bill Analysis contemplates language not included in the committee substitute.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The deregulation of concessionaires lowers the costs of holding events in the state of Florida for the private sector. The deregulation of concessionaires brings Florida in line with the majority of other states that do not license concessionaires.

Additionally, permitting five percent of seats in a house be issued as complimentary tickets without being included in gross receipts or paying post-event taxes on the tickets lowers the costs of holding events in the state of Florida. This provision is similar to other states which hold professional boxing, kickboxing, and mixed martial arts, including Nevada, which holds the largest number of events of any state in the nation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

²⁰ *Id.*

²¹ *Id.*

B. RULE-MAKING AUTHORITY:

Yes.

The Commission must adopt rules establishing a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit.

The Commission must also adopt rules imposing late fees in the event of taxes owed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2014, the Business & Professional Regulation Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute.

The proposed committee substitute made the following changes to the filed version of the bill:

- Updated definitions to clarify terms and meet industry standards.
- Provided that the executive director may issue subpoenas and administer oaths to permit-holders and record keepers.
- Clarified jurisdiction of the Commission.
- Combined two similar exemptions to ch. 548, F.S., into one exemption.
- Removed the requirement that foreign copromoters be licensed by the Commission and removed references to foreign copromoters.
- Updated language regarding the emergency suspension of a license to ensure licensees are provided due process and the public is protected.
- Updated language to ensure hearings held to enforce ch. 548, F.S., comply with the Administrative Procedures Act.
- Permitted promoters to issue complimentary tickets for up to five percent of the seats of the house designated for use in the event without including those tickets in gross receipts and without paying required taxes.
- Provided that the Commission may authorize more than five percent of the complimentary tickets be removed from gross receipts if issued to active or reserve military, veterans, or tax-exempt charities. Additionally, provided the process promoters may use to apply for authorization.
- Provided that promoters that remit the maximum tax amount of \$40,000 for the sale or lease of broadcasting rights are only required to indicate that the amount of \$40,000 has been remitted on a form provided by the Commission.

The staff analysis is drafted to reflect the committee substitute.

1 A bill to be entitled
2 An act relating to pugilistic exhibitions; amending s.
3 548.002, F.S.; revising and providing definitions;
4 amending s. 548.004, F.S.; revising the duties and
5 responsibilities of the executive director of the
6 Florida State Boxing Commission; deleting a provision
7 requiring the electronic recording of commission
8 proceedings; amending s. 548.006, F.S.; clarifying the
9 jurisdiction of the commission over certain amateur
10 and professional matches; amending s. 548.007, F.S.;
11 revising the applicability of chapter 548, F.S.;
12 repealing s. 548.013, F.S., relating to a requirement
13 that foreign copromoters be licensed; amending s.
14 548.014, F.S.; conforming provisions to changes made
15 by the act; repealing s. 548.015, F.S., relating to
16 the authority of the commission to require a
17 concessionaire to file a form of security with the
18 commission; amending s. 548.017, F.S.; deleting a
19 requirement for the licensure of concessionaires and
20 booking agents; amending s. 548.046, F.S.; providing
21 for immediate license suspension and other
22 disciplinary action if a participant fails or refuses
23 to provide a urine sample or tests positive for
24 specified prohibited substances; amending s. 548.052,
25 F.S.; revising requirements for providing an advance
26 payment or loan against a purse to a participant;

27 amending s. 548.054, F.S.; revising procedure and
28 requirements for requesting a hearing following the
29 withholding of a purse; amending s. 548.06, F.S.;
30 revising the calculation of gross receipts;
31 authorizing a promoter to issue a specified amount of
32 complimentary tickets that are not included in gross
33 receipts; requiring authorization from the commission
34 to issue complimentary tickets that are not included
35 in gross receipts in an amount greater than a
36 specified amount; providing application requirements
37 and procedures; providing that certain promoters are
38 not required to report specified information;
39 requiring promoters to retain specified documents and
40 records; authorizing the commission and the Department
41 of Business and Professional Regulation to audit
42 specified records retained by a promoter; requiring
43 the commission to adopt rules; amending s. 548.07,
44 F.S.; revising the procedure for suspension of
45 licensure; amending s. 548.073, F.S.; requiring that
46 commission hearings be held in accordance with the
47 Administrative Procedure Act; providing an
48 appropriation; providing an effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Section 548.002, Florida Statutes, is amended

53 to read:

54 548.002 Definitions.—As used in this chapter, the term:

55 (1) "Amateur" means a person who has never received nor
 56 competed for any purse or other article of value, either for the
 57 expenses of training or for participating in a match, other than
 58 a prize of \$50 or less in value ~~or less~~.

59 (2) "Amateur sanctioning organization" means a ~~any~~
 60 business entity organized for sanctioning and supervising
 61 matches involving amateurs.

62 (3) "Boxing" means the unarmed combat sport of fighting by
 63 striking to compete with the fists.

64 (4) "Commission" means the Florida State Boxing
 65 Commission.

66 ~~(5) "Concessionaire" means any person or business entity~~
 67 ~~not licensed as a promoter which receives revenues or other~~
 68 ~~compensation from the sale of tickets or from the sale of~~
 69 ~~souvenirs, programs, broadcast rights, or any other concessions~~
 70 ~~in conjunction with the promotion of a match.~~

71 ~~(5)(6)~~ (6) "Contest" means a boxing, kickboxing, or mixed
 72 martial arts engagement in which persons participating strive
 73 earnestly to win using, ~~but not necessarily being limited to,~~
 74 strikes and blows to the head or other full-contact maneuvers.

75 ~~(6)(7)~~ (7) "Department" means the Department of Business and
 76 Professional Regulation.

77 ~~(7)(8)~~ (8) "Event" means one or more matches comprising a
 78 show.

CS/HB 773

2014

79 (8)~~(9)~~ "Exhibition" means a boxing, kickboxing, or mixed
 80 martial arts engagement in which persons participating show or
 81 display their skill without necessarily striving to win using,
 82 ~~but not necessarily being limited to,~~ strikes and blows to the
 83 head or other full-contact maneuvers.

84 (9) "Face value" means the dollar value of a ticket equal
 85 to the dollar amount that a customer is required to pay or, for
 86 complimentary tickets, would have been required to pay to
 87 purchase a ticket with equivalent seating priority in order to
 88 view the event. If the ticket specifies the amount of admission
 89 charges attributable to state or federal taxes, such taxes are
 90 not included in the face value.

91 (10) "Full contact" means the use of strikes and blows
 92 during a match which:

93 (a) Are intended to break the plane of the receiving
 94 participant's or amateur's body;

95 (b) Are delivered to the head, face, neck, or body of the
 96 receiving participant or amateur; and

97 (c) Cause the receiving participant or amateur to move in
 98 response to the strike or blow.

99 ~~(10) "Foreign copromoter" means a promoter who has no~~
 100 ~~place of business within this state.~~

101 (11) "Judge" means a person licensed by the commission who
 102 evaluates and scores a match using a designated scoring system
 103 ~~who has a vote in determining the winner of any contest.~~

104 (12) "Kickboxing" means the unarmed combat sport of

105 fighting by striking to compete with the fists, hands, feet,
 106 legs, or any combination thereof, ~~and includes "punchkick" and~~
 107 ~~other similar competitions.~~ The term does not include any form
 108 of ground fighting techniques.

109 (13) "Manager" means a ~~any~~ person who, directly or
 110 indirectly, controls or administers the boxing, kickboxing, or
 111 mixed martial arts affairs of a ~~any~~ participant.

112 (14) "Match" means a ~~any~~ contest or exhibition.

113 (15) "Matchmaker" means a person who brings together
 114 professionals or arranges matches for professionals.

115 (16) "Mixed martial arts" means the unarmed combat sport
 116 involving the use, subject to any applicable limitations set
 117 ~~forth in this chapter,~~ of a combination of techniques,
 118 including, but not limited to, grappling, kicking, striking, and
 119 using techniques from different disciplines of the martial arts,
 120 including, but not limited to, boxing, kickboxing, Muay Thai,
 121 jujitsu, and wrestling ~~grappling, kicking, and striking.~~

122 (17) "Participant" means a professional competing in a
 123 boxing, kickboxing, or mixed martial arts match.

124 (18) "Physician" means a person who is approved by the
 125 commission, who has a license to practice medicine issued
 126 pursuant to chapter 458 or chapter 459, and whose license to
 127 practice medicine is unencumbered and in good standing ~~an~~
 128 ~~individual licensed to practice medicine and surgery in this~~
 129 ~~state.~~

130 (19) "Professional" means a person who has received or

CS/HB 773

2014

131 competed for a ~~any~~ purse or other article of a value greater
 132 than \$50, either for the expenses of training or for
 133 participating in a ~~any~~ match.

134 (20) "Promoter" means a ~~any~~ person or entity, including an
 135 ~~and includes any~~ officer, director, trustee, partner ~~employee,~~
 136 or owner ~~stockholder~~ of a corporate promoter or promoter
 137 partnership, who produces, arranges, or stages a ~~any~~ match
 138 involving a professional.

139 (21) "Purse" means the financial guarantee or other
 140 remuneration for which a professional is participating in a
 141 match and includes the professional's share of any payment
 142 received for radio broadcasting and, television, including pay-
 143 per-view or closed circuit ~~and motion picture rights.~~

144 (22) "Second" or "cornerman" means a person who assists a
 145 ~~the match~~ participant in preparing for a match and between
 146 rounds, and who maintains the corner of a ~~the~~ participant during
 147 a ~~the~~ match.

148 (23) "Secretary" means the Secretary of Business and
 149 Professional Regulation.

150 (24) "Unarmed combat" means a form of competition in which
 151 a strike or blow is struck that may reasonably be expected to
 152 inflict injury.

153 Section 2. Section 548.004, Florida Statutes, is amended
 154 to read:

155 548.004 Executive director; duties, compensation,
 156 administrative support.-

157 (1) The department shall employ an executive director with
 158 the approval of the commission. The executive director shall
 159 serve at the pleasure of the secretary. The executive director
 160 or the executive director's designee shall perform the duties
 161 specified by the commission, including conducting the functions
 162 of the commission office; appointing event and commission
 163 officials; approving licenses, permits, and matches; and
 164 performing any ~~keep a record of all proceedings of the~~
 165 ~~commission; shall preserve all books, papers, and documents~~
 166 ~~pertaining to the business of the commission; shall prepare any~~
 167 ~~notices and papers required; shall appoint judges, referees, and~~
 168 ~~other officials as delegated by the commission and pursuant to~~
 169 ~~this chapter and rules of the commission; and shall perform such~~
 170 other duties as the department or commission deems necessary to
 171 fulfill the duties of the position ~~directs~~. The executive
 172 director may issue subpoenas and administer oaths to witnesses,
 173 permitholders, record custodians, and licensees.

174 ~~(2) The commission shall require electronic recording of~~
 175 ~~all scheduled proceedings of the commission.~~

176 ~~(2)(3)~~ (2) The department shall provide assistance in budget
 177 development and budget submission for state funding requests.
 178 The department shall submit an annual balanced legislative
 179 budget for the commission which is based upon anticipated
 180 revenue. The department shall provide technical assistance and
 181 administrative support, if requested or determined necessary
 182 ~~needed~~, to the commission and its executive director on issues

183 relating to personnel, contracting, property management, or
 184 other issues identified as important to performing the duties of
 185 this chapter and to protecting the interests of the state.

186 Section 3. Section 548.006, Florida Statutes, is amended
 187 to read:

188 548.006 Power of commission to control professional and
 189 amateur boxing, kickboxing, and mixed martial arts matches
 190 ~~pugilistic contests and exhibitions~~; certification of
 191 competitiveness of professional mixed martial arts and
 192 kickboxing matches.-

193 (1) The commission has exclusive jurisdiction over every
 194 boxing, kickboxing, and mixed martial arts match held within the
 195 state which involves a professional.

196 (2) As to professional mixed martial arts and kickboxing,
 197 until a central repository of match records for each exists and
 198 is approved by the commission, the matchmaker shall certify as
 199 to the competitiveness of each match.

200 (3) The commission has exclusive jurisdiction over
 201 approval, disapproval, suspension of approval, and revocation of
 202 approval of all amateur sanctioning organizations for amateur
 203 boxing, and kickboxing, and mixed martial arts matches held in
 204 this state.

205 (4) Professional and amateur matches shall be held in
 206 accordance with this chapter and the rules adopted by the
 207 commission.

208 Section 4. Section 548.007, Florida Statutes, is amended

209 to read:

210 548.007 Exemptions.—This chapter does ~~Applicability of~~
 211 ~~provisions to amateur matches and certain other matches or~~
 212 ~~events. Sections 548.001-548.079 do not apply to any of the~~
 213 following:

214 (1) A match that does not allow full contact ~~conducted or~~
 215 ~~sponsored by a bona fide nonprofit school or education program~~
 216 ~~whose primary purpose is instruction in the martial arts,~~
 217 ~~boxing, or kickboxing, if the match held in conjunction with the~~
 218 ~~instruction is limited to amateur participants. who are students~~
 219 ~~of the school or instructional program.~~

220 (2) A match conducted or sponsored by a any company or
 221 detachment of the Florida National Guard or the United States
 222 Armed Forces, if the match is limited to amateurs ~~participants~~
 223 who are members of a the company or detachment of the Florida
 224 National Guard or the United States Armed Forces. ~~or~~

225 (3) A match conducted or sponsored by the Fraternal Order
 226 of Police, if the match is limited to amateurs ~~amateur~~
 227 ~~participants~~ and is held in conjunction with a charitable event.

228 (4) A match conducted by or between public postsecondary
 229 educational institutions or public K-12 schools, as described in
 230 s. 1000.04, if the match is limited to amateurs who are members
 231 of a school-sponsored club or team.

232 (5) A match conducted by the International Olympic
 233 Committee, the International Paralympic Committee, the Special
 234 Olympics, or the Junior Olympics, if the match is limited to

235 | amateurs who are competing in or attempting to qualify for the
 236 | Olympics, Paralympics, Special Olympics, or Junior Olympics.

237 | (6) A professional or amateur martial arts activity. As
 238 | used in this subsection, the term "martial arts" means one of
 239 | the traditional forms of self-defense or unarmed combat
 240 | involving the use of physical skill and coordination, including,
 241 | but not limited to, karate, aikido, judo, and kung fu. The term
 242 | does not include mixed martial arts.

243 | Section 5. Section 548.013, Florida Statutes, is repealed.

244 | Section 6. Paragraphs (a) and (d) of subsection (1) and
 245 | subsection (2) of section 548.014, Florida Statutes, are amended
 246 | to read:

247 | 548.014 Promoters ~~and foreign copromoters~~; bonds or other
 248 | security.-

249 | (1)(a) Before a ~~any~~ license is issued or renewed to a
 250 | promoter ~~or foreign copromoter~~ and before a ~~any~~ permit is issued
 251 | to a promoter ~~or foreign copromoter~~, she or he must file a
 252 | surety bond with the commission in a ~~such~~ reasonable amount
 253 | determined by the commission of at least, but not less than
 254 | \$15,000, as the commission determines.

255 | (d) The surety bond must be conditioned upon the faithful
 256 | performance by the promoter ~~or foreign copromoter~~ of her or his
 257 | obligations under this chapter and upon the fulfillment of her
 258 | or his contracts with any other licensees under this chapter.
 259 | However, the aggregate annual liability of the surety for all
 260 | obligations and fees may not exceed the amount of the bond.

261 (2) In lieu of a surety bond, the promoter ~~or foreign~~
 262 ~~copromoter~~ may deposit with the commission cash or a certified
 263 check, in an equivalent amount and subject to the same
 264 conditions as the bond. Such security may not be returned to the
 265 promoter until 1 year after the date ~~on which~~ it was deposited
 266 with the commission unless a surety bond is substituted for it.
 267 If no claim against the deposit is outstanding, it shall be
 268 returned to the depositor 1 year after the date it was
 269 deposited.

270 Section 7. Section 548.015, Florida Statutes, is repealed.

271 Section 8. Subsection (1) of section 548.017, Florida
 272 Statutes, is amended to read:

273 548.017 Participants, managers, and other persons required
 274 to have licenses.—

275 (1) A participant, manager, trainer, second, timekeeper,
 276 referee, judge, announcer, physician, matchmaker,
 277 ~~concessionaire,~~ or promoter must ~~booking agent or representative~~
 278 ~~of a booking agent~~ shall be licensed before directly or
 279 indirectly acting in such capacity in connection with any match
 280 involving a participant. A physician approved by the commission
 281 must be licensed pursuant to chapter 458 or chapter 459, must
 282 maintain an unencumbered license in good standing, and must
 283 demonstrate satisfactory medical training or experience in
 284 boxing, or a combination of both, to the executive director
 285 before ~~prior to~~ working as the ringside physician.

286 Section 9. Paragraph (c) of subsection (3) of section

287 548.046, Florida Statutes, is amended, and paragraph (d) is
 288 added to that subsection, to read:

289 548.046 Physician's attendance at match; examinations;
 290 cancellation of match.—

291 (3)

292 (c) A participant who fails or refuses ~~Failure or refusal~~
 293 to provide a urine sample immediately upon request shall be
 294 considered an immediate serious danger to the health, safety, or
 295 welfare of the public and his or her opponent. The license of a
 296 participant who fails or refuses to provide a urine sample shall
 297 immediately be suspended pursuant to s. 120.60(6), and such
 298 failure or refusal is grounds for additional disciplinary action
 299 ~~result in the revocation of the participant's license. Any~~
 300 ~~participant who has been adjudged the loser of a match and who~~
 301 ~~subsequently refuses to or is unable to provide a urine sample~~
 302 ~~shall forfeit his or her share of the purse to the commission. A~~
 303 ~~Any~~ participant who is adjudged the winner of a match and who
 304 subsequently refuses to or is unable to provide a urine sample
 305 forfeits ~~shall forfeit~~ the win and ~~shall not be allowed to~~
 306 ~~engage in any future match in the state. The decision shall be~~
 307 changed to a no-decision result and shall be entered into the
 308 official record ~~as the result of the match. The purse shall be~~
 309 redistributed as though the participant found to be in violation
 310 of this subsection had lost the match. ~~If redistribution of the~~
 311 ~~purse is not necessary or after redistribution of the purse is~~
 312 ~~completed, the participant found to be in violation of this~~

313 ~~subsection shall forfeit his or her share of the purse to the~~
 314 ~~commission.~~

315 (d) A participant who tests positive for a prohibited
 316 substance as specified by commission rule shall be considered an
 317 immediate serious danger to the health, safety, or welfare of
 318 the public and his or her opponent. The license of a participant
 319 who tests positive for a prohibited substance shall immediately
 320 be suspended pursuant to s. 120.60(6), and the positive test
 321 result is grounds for additional disciplinary action.

322 Section 10. Section 548.052, Florida Statutes, is amended
 323 to read:

324 548.052 Payment of advances by promoter ~~or foreign~~
 325 ~~copromoter~~ regulated.—A promoter ~~or foreign copromoter~~ may not
 326 pay, lend, or give a participant an advance against her or his
 327 purse before a contest, except with the prior written permission
 328 of the commission, the executive director, or the executive
 329 director's designee a commissioner; and, if permitted, such
 330 advance may be made only for expenses for transportation and
 331 maintenance in preparation for a contest.

332 Section 11. Subsection (2) of section 548.054, Florida
 333 Statutes, is amended to read:

334 548.054 Withholding of purses; hearing; disposition of
 335 withheld purse forfeiture.—

336 (2) Any purse so withheld shall be delivered by the
 337 promoter to the commission upon demand. Within 10 days after the
 338 match, the person from whom the sum was withheld may submit a

339 petition for a hearing to the commission pursuant to s. 120.569
 340 ~~apply in writing to the commission for a hearing.~~ Upon receipt
 341 of the petition application, the commission shall hold ~~shall fix~~
 342 ~~a date for a hearing pursuant to ss. 120.569 and 120.57. Within~~
 343 ~~10 days after the hearing or after 10 days following the match,~~
 344 If no petition application for a hearing is filed, the
 345 commission shall meet and determine the disposition ~~to be made~~
 346 of the withheld purse. If the commission finds the charges
 347 sufficient, it may declare all or ~~any~~ part of the funds
 348 forfeited. If the commission finds the charges insufficient ~~not~~
 349 ~~sufficient upon which to base a withholding order,~~ it shall
 350 immediately distribute the withheld funds to the appropriate
 351 persons ~~entitled thereto.~~

352 Section 12. Section 548.06, Florida Statutes, is amended
 353 to read:

354 548.06 Payments to state; exemptions; audit of records.-

355 (1) Except as provided in subsection (5), a promoter
 356 holding a match shall, within 72 hours after the match, file
 357 with the commission a written report that ~~which~~ includes the
 358 number of tickets sold, the amount of gross receipts, and any
 359 other facts the commission may require. For the purposes of this
 360 chapter, ~~total~~ gross receipts include each of the following:

361 (a) The gross price charged for the sale or lease of
 362 broadcasting, television, and pay-per-view ~~motion picture~~ rights
 363 of any match occurring within the state without any deductions
 364 for commissions, brokerage fees, distribution fees, advertising,

365 or other expenses or charges.†

366 ~~(b) The portion of the receipts from the sale of~~
 367 ~~souvenirs, programs, and other concessions received by the~~
 368 ~~promoter;~~

369 (b) (e) The face value of all tickets sold and
 370 complimentary tickets issued, provided, or given, not including
 371 complimentary tickets issued, provided, or given in accordance
 372 with subsections (2) and (3).† and

373 ~~(c) (d) The face value of any seat or seating issued,~~
 374 ~~provided, or given in exchange for advertising, sponsorships, or~~
 375 ~~anything of value to the promotion of an event.~~

376 (2) A promoter may issue complimentary tickets for up to 5
 377 percent of the seats in the house designated for use in the
 378 event, equally distributed among the price categories for which
 379 complimentary tickets are issued, without including the face
 380 value of such tickets in the calculation of gross receipts.

381 (3) (a) A promoter may, with written authorization from the
 382 commission, the executive director, or the executive director's
 383 designee, issue, provide, or give additional complimentary
 384 tickets in an amount greater than 5 percent of the seats in the
 385 house designated for use in the event without including the face
 386 value of such tickets in the calculation of gross receipts.

387 (b) The commission, the executive director, or the
 388 executive director's designee may provide authorization for
 389 additional complimentary tickets that are issued, provided, or
 390 given to:

391 1. Reserve or active duty members of the United States
 392 Armed Forces or the Florida National Guard.

393 2. Veterans, as defined in s. 1.01(14), even if the
 394 veteran is not eligible to receive benefits as a wartime
 395 veteran.

396 3. Not-for-profit organizations exempt from federal income
 397 tax under s. 501(c)(3) of the Internal Revenue Code.

398 (c) A promoter seeking authorization to issue, provide, or
 399 give additional complimentary tickets in an amount greater than
 400 5 percent of the seats in the house designated for use in the
 401 event in accordance with this subsection shall submit an
 402 application on a form adopted by the commission at least 2
 403 business days before the date of the professional event. The
 404 application must include, at a minimum, the date, time, and
 405 location of the event; the number of additional complimentary
 406 tickets for which the promoter is seeking authorization from the
 407 commission; the percentage of tickets issued for the seats in
 408 the house designated for use in the event for which the promoter
 409 is seeking authorization from the commission; and the persons or
 410 entities that will receive the additional complimentary tickets.

411 (d) The commission, the executive director, or the
 412 executive director's designee shall approve or deny the
 413 application no later than 1 business day before the date of the
 414 professional event and shall provide the promoter a written
 415 explanation for each approval or denial. The commission, the
 416 executive director, or the executive director's designee may set

417 limitations on an approval and may approve all or a portion of
 418 the additional complimentary tickets for which the promoter has
 419 sought authorization. The commission, the executive director, or
 420 the executive director's designee shall provide the promoter a
 421 written explanation of any limitation placed on an approval.

422 (e) A promoter who receives authorization to issue,
 423 provide, or give complimentary tickets in an amount greater than
 424 5 percent of the seats in the house designated for use in the
 425 event in accordance with this subsection shall maintain
 426 documentation showing that the authorized additional
 427 complimentary tickets were issued, provided, or given to
 428 individuals or entities eligible for such tickets under
 429 paragraph (b). These documents are subject to an audit of the
 430 promoter's books and records pursuant to subsection (8).

431 (f) The commission may not include the face value of
 432 complimentary tickets authorized under this subsection as part
 433 of the total gross receipts from admission fees.

434 (g) The promoter may issue, provide, or give complimentary
 435 tickets in an amount greater than 5 percent of the seats in the
 436 house designated for use in the event without obtaining written
 437 authorization in accordance with this subsection if the promoter
 438 includes the face value of such tickets in the calculation of
 439 gross receipts.

440 (h) The promoter remains responsible for complying with
 441 reporting and taxation requirements related to gross receipts as
 442 provided in this section. However, complimentary tickets issued,

443 given, or provided under subsection (2) or as authorized by the
 444 commission are exempt from such reporting and taxation
 445 requirements.

446 ~~(2) Where the rights to telecast a match or matches held~~
 447 ~~in this state under the supervision of the Florida State Boxing~~
 448 ~~Commission are in whole owned by, sold to, acquired by, or held~~
 449 ~~by any person who intends to or subsequently sells or, in some~~
 450 ~~other manner, extends such rights in part to another, such~~
 451 ~~person is deemed to be a promoter and must be licensed as such~~
 452 ~~in this state. Such person shall, within 72 hours after the~~
 453 ~~sale, transfer, or extension of such rights in whole or in part,~~
 454 ~~file with the commission a written report that includes the~~
 455 ~~number of tickets sold, the amount of gross receipts, and any~~
 456 ~~other facts the commission may require.~~

457 ~~(3) A concessionaire shall, within 72 hours after the~~
 458 ~~match, file with the commission a written report that includes~~
 459 ~~the number of tickets sold, the amount of gross receipts, and~~
 460 ~~any other facts the commission may require.~~

461 (4) A ~~Any~~ written report required to be filed with the
 462 commission under this section must ~~shall~~ be postmarked within 72
 463 hours after the conclusion of the match, and an additional 5
 464 days is ~~shall~~ be allowed for mailing.

465 (5) Each ~~the~~ written report must ~~shall~~ be accompanied by a
 466 tax payment in the amount of 5 percent of the total gross
 467 receipts exclusive of any federal taxes, except that the tax
 468 payment derived from the gross price charged for the sale or

469 lease of broadcasting, television, and pay-per-view motion
 470 picture rights of an event occurring within the state may ~~shall~~
 471 not exceed \$40,000 for a ~~any~~ single event. A promoter who remits
 472 the maximum tax amount of \$40,000 for the sale or lease of
 473 broadcasting, television, or pay-per-view rights of an event
 474 occurring within the state and who submits a form provided by
 475 the commission indicating that he or she has paid the maximum
 476 tax amount is not required to provide any further information
 477 with regard to the sale or lease of broadcasting, television, or
 478 pay-per-view rights. However, the promoter remains responsible
 479 for complying with reporting and taxation requirements related
 480 to other gross receipts as provided in this chapter.

481 (6) (a) A ~~Any~~ promoter who willfully makes a false and
 482 fraudulent report under this section ~~commits is guilty of~~
 483 perjury and, upon conviction, is subject to punishment as
 484 provided by law. Such penalty ~~is shall be~~ in addition to any
 485 other penalties imposed ~~under by~~ this chapter.

486 (b) A ~~Any~~ promoter who willfully fails, neglects, or
 487 refuses to make a report or to pay the taxes as prescribed or
 488 who refuses to allow the commission to examine the books,
 489 papers, and records of a ~~any~~ promotion ~~commits is guilty of~~ a
 490 misdemeanor of the second degree, punishable as provided in s.
 491 775.082 or s. 775.083.

492 (7) A promoter shall retain a copy of the following
 493 records for 1 year and provide a copy of such records to the
 494 commission upon request:

495 (a) Records necessary to support each report submitted to
 496 the commission, including a copy of each report filed with the
 497 commission.

498 (b) A copy of each independently prepared ticket manifest.

499 (c) Documentation required to be maintained under
 500 paragraph (3)(e) verifying that additional complimentary tickets
 501 authorized by the commission, the executive director, or the
 502 executive director's designee were issued, provided, or given to
 503 eligible individuals or entities.

504 (8) Compliance with this section is subject to
 505 verification by department or commission audit. The commission
 506 may, upon reasonable notice to the promoter, audit a promoter's
 507 books and records relating to the promoter's operations under
 508 this chapter.

509 (9) The commission shall adopt rules establishing a
 510 procedure for auditing a promoter's records and resolving any
 511 inconsistencies revealed by an audit and shall adopt a rule
 512 imposing a late fee in the event of taxes owed.

513 Section 13. Section 548.07, Florida Statutes, is amended
 514 to read:

515 548.07 Suspension of license or permit by commissioner;
 516 hearing.—

517 (1) The commission, the executive director, or the
 518 executive director's designee may issue an emergency suspension
 519 order pursuant to s. 120.60(6) suspending the license of a
 520 person or entity licensed under this chapter who poses an

521 immediate, serious danger to the health, safety, and welfare of
 522 the public or the participants in a match.

523 (2) The department's Office of General Counsel shall
 524 review the grounds for each emergency suspension order issued
 525 and, if sufficient, shall file an administrative complaint
 526 against the licensee within 21 days after the issuance of the
 527 emergency suspension order.

528 (3) After service of the administrative complaint pursuant
 529 to the procedure provided in s. 455.275, the disciplinary
 530 process shall proceed pursuant to chapter 120 ~~Notwithstanding~~
 531 ~~any provision of chapter 120, any member of the commission may,~~
 532 ~~upon her or his own motion or upon the verified written~~
 533 ~~complaint of any person charging a licensee or permittee with~~
 534 ~~violating this chapter, suspend any license or permit until~~
 535 ~~final determination by the commission if such action is~~
 536 ~~necessary to protect the public welfare and the best interests~~
 537 ~~of the sport. The commission shall hold a hearing within 10 days~~
 538 ~~after the date on which the license or permit is suspended.~~

539 Section 14. Section 548.073, Florida Statutes, is amended
 540 to read:

541 548.073 Commission hearings.—All hearings held under this
 542 chapter shall be held in accordance with chapter 120
 543 ~~Notwithstanding the provisions of chapter 120, any member of the~~
 544 ~~commission may conduct a hearing. Before any adjudication is~~
 545 ~~rendered, a majority of the members of the commission shall~~
 546 ~~examine the record and approve the adjudication and order.~~

CS/HB 773

2014

547 Section 15. The sum of \$111,000 in recurring funds is
 548 appropriated from the General Revenue Fund to the Department of
 549 Business and Professional Regulation for the implementation of
 550 this act by the Florida State Boxing Commission during the 2014-
 551 2015 fiscal year.

552 Section 16. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1267 Family Trust Companies
SPONSOR(S): Insurance & Banking Subcommittee; McBurney
TIED BILLS: CS/HB 1269 **IDEN./SIM. BILLS:** SB 1238

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee		Keith <i>AK</i>	Topp <i>BDT</i>
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) administers the Florida Financial Institutions Codes (chs. 655-667, F.S., "the Codes"), which includes the regulation of trust companies. Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the general public.

A small number of states allow families to form and operate *private or family trust companies (FTCs)*, which provide trust services similar to those that can be provided by an individual trustee or a financial institution, but are owned exclusively by family members and may not provide fiduciary services to the public. These private, family trust companies are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements, for a variety of personal, investment, regulatory, and tax reasons. Currently, there are no Florida statutes authorizing the formation of family trust companies, licensed trust companies, and foreign licensed trust companies.

CS/HB 1267 creates ch. 662, F.S., within the Codes to authorize families to form and operate any of these three family trust companies in this state, subject to varying regulatory requirements, including a license or registration with the OFR, maintenance of minimum capital accounts for FTCs with a principal place of business in Florida, and certain reporting requirements. The bill prohibits all three FTC types from advertising and conducting trust business with the public. CS/HB 1267 authorizes the OFR to investigate applications for licensure or registration, require annual renewals and other regulatory filings from licensees and registrants, and to conduct periodic examinations of all three family trust company types.

The bill has a significant fiscal impact on state revenues and expenditures. Revenues generated as a result of the regulatory requirements of the bill will be deposited in to the Financial Institutions' Regulatory Trust Fund (trust fund) within the OFR and stem from an application fee at initial licensure and the renewal of a license, in addition to any administrative fines and penalties the OFR *may* impose for the late submittal of payment for examination costs, the late submittal of an annual renewal, and the late submittal of any report prescribed by rule or required by ch. 662, F.S. The OFR projects that ten to twelve FTCs will apply for licensure in the first year, generating a projected \$100,000 to \$120,000 in additional revenue to be deposited into the trust fund in the first year. In addition, a projection of one to three FTCs will apply for licensure in subsequent years. The OFR also projects that annual license renewals will generate an additional \$15,000 to \$18,000 annually to be deposited into the trust fund.

The OFR projects that in order to conduct examinations, process applications and provide regulatory oversight of licensed trust companies, there is an immediate need for three full-time equivalent positions (See fiscal section). However, the bill provides that any examination "costs" accrued while fulfilling the regulatory requirements of examining the books and records of FTCs shall be borne by the trust company under examination. The "costs" that accrue during examination would be the salary and travel expenses of field staff that are directly attributable to the examination of the FTC in addition to the travel expenses of any supervisory or support staff required as a result of examination findings.

The bill does not appear to have a fiscal impact on local governments.

The bill is effective October 1, 2014, if the linked public records bill (CS/HB 1269) or similar legislation is adopted in the same legislative session.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Trusts

A trust is generally defined as, "a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it."¹

A trust must have three interest holders - a settlor (also called a "grantor"), a trustee, and a beneficiary. The settlor is the party creating the trust. The beneficiary has an equitable interest in property subject to trust, enjoying the benefit of the administration of the trust by a trustee.² The trustee holds legal title to the property held in trust for the benefit of the beneficiary.³ A trust company may offer its services to the general public to serve as trustee of private trusts.

Public/Commercial Trust Companies

The Florida Office of Financial Regulation's (OFR)'s Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes).⁴ The OFR administers ch. 655 (Financial Institutions), ch. 657 (Credit Unions), ch. 658 (Banks and Trust Companies), ch. 660 (Trust Business), ch. 663 (International Banking), ch. 665 (Associations), and ch. 667 (Savings Banks), F.S. As of October 2013, the Division of Financial Institutions licenses and regulates a total of 249 state-chartered financial institutions: 139 banks, 71 credit unions, 27 international bank offices, and 12 trust companies.⁵

The Codes define "trust company" as:

[A]ny business organization, other than a bank or state or federal association, which is authorized by lawful authority to engage in *trust business*. A bank or state or federal association conducting business pursuant to lawful authority, which also by lawful authority has authority to engage in trust business, is the functional equivalent of a trust company with respect to performance of fiduciary services, and may assume fiduciary duties under appointive instruments that establish fiduciary relationships.⁶

"Trust business" is defined as:

[T]he business of acting as a fiduciary when such business is conducted by a bank, state or federal association, or a trust company, and also when conducted by any other business organization as its sole or principal business.⁷

¹ 55A Fla.Jur.2d Trusts s.1; *see also* s. 731.201(38), F.S.

² *Id.*

³ 55A Fla.Jur.2d Trusts s.1.

⁴ Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

⁵ OFR bill analysis of HB 673 (received February 4, 2014), on file with the Insurance & Banking Subcommittee staff.

⁶ Section 658.12(21), F.S.

⁷ Section 658.12(20), F.S. CS/HB 673 and CS/1012 (2014), which are currently pending in the Florida Legislature, amends the definition of "trust business" to clarify that the trust business is conducted for compensation *that the OFR does not consider to be de minimis*. The OFR has indicated that it has received inquiries on behalf of individuals engaging in estate and trust planning activities whereby fiduciaries serve as trustees with only minimal compensation and expense reimbursement. In these situations, the OFR has opined that such individuals are not engaging in the trust business as professional fiduciaries, and the bill provides clarification to that effect.

The OFR considers “trust business” to mean that a trust business is a “for profit” entity that is providing fiduciary services to the general public.

Family Trust Companies (FTCs)

Essentially, a FTC (also known as a private trust company) is a business entity, such as a corporation or a limited liability company, which provides trust services for a single family. By acting as a family-owned enterprise, a FTC combines attributes of both institutional and individual trustees, and offers fiduciary, investment advisory, wealth management, and administrative services. Unlike trust companies, however, FTCs cannot transact trust business with the general public, nor can they accept deposits.

As such, FTCs are generally subject to fewer state regulatory requirements such as reduced capital requirements and regulatory filings, and may enjoy federal tax benefits depending on the FTC’s governance structure and the extent of family control.⁸ However, the initial formation and ongoing administration of FTCs can still entail significant expense. Thus, FTCs are generally utilized by only larger, wealthier families for long-term, multigenerational trustees for the following reasons:⁹

- To handle specialized, often illiquid or volatile assets (such as agricultural properties, family-owned businesses, or alternative investments, including, but not limited to, private equity or venture capital investments) that commercial trustees may be less willing to oversee, due to regulatory or fiduciary restrictions surrounding investment discretion;¹⁰
- To provide self-governance and more flexibility for a family, including allowing the family to select separate investment managers for specific asset classes;
- To foster consolidation of investments and family office matters;
- To promote non-family financial objectives, including family succession planning and wealth education for younger generations; and
- To provide an entrepreneurial mindset to the management of the family’s investments.

Currently, a family wishing to use this wealth management vehicle could apply to the OFR to be licensed as a “state trust company” under the Codes to conduct general trust business. However, the statutory and regulatory framework for forming and operating a “state trust company” may be viewed by some as unwieldy, overbroad and intrusive for almost all families who would like to set up a trust company that will limit its services to the family. For instance, a state trust company must: (a) maintain \$3 million of capital,¹¹ (b) file quarterly financial reports with the OFR,¹² (c) have an annual CPA audit and submit the audit report to the OFR,¹³ and (d) be examined by an OFR examination at least every 18 months.¹⁴

On a case-by-case basis, the OFR exempts “family trust companies” from statutory licensing and supervision by way of the family entering into an agreement with the OFR stating that they will not operate a “for profit” trust company and will limit the trust company’s services to the family (and, conversely, will not offer these services to the general public). However, such an exemption may trigger another regulatory requirement – that is, under the federal Investment Adviser Act.

⁸ I.R.S. Notice 2008-63, 2008-31 I.R.B. 261. See also Alan V. Ytterberg and James P. Weller, *Managing Family Wealth Through a Private Trust Company*, 36 *Actec Law Journal* 501, 511-512 (2010).

⁹ Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Family Trust Companies Act, new Florida Statutes Chapter 659 and Legislative Position Request Form*, on file with the Insurance & Banking Subcommittee staff.

¹⁰ Iris J. Goodwin, *How the Rich Stay Rich: Using a Family Trust Company to Secure a Family Fortune*, 40 *Seton Hall L. Rev.* 467, 507 (2010).

¹¹ Section 658.21, F.S.

¹² Rule 69U-120.0451, F.A.C.

¹³ Section 655.045(3), F.S.

¹⁴ Section 655.045(1), F.S.

Federal Investment Advisers Act of 1940 and Family Offices

A family that is exempt from state trust company regulation may still need to register with the U.S. Securities and Exchange Commission (SEC) as an "investment adviser" under the federal Investment Advisers Act (IAA).¹⁵ An "investment adviser" is any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.¹⁶ SEC registration requirements and regulations may include: (1) filing a Form ADV with the SEC, which must be kept current with periodic updates; (2) annual filings with the SEC of an audited balance sheet; (3) undergoing an annual surprise examination by an independent public accountant to verify client assets; and (4) inspections and examinations by SEC staff.¹⁷ The extent to which a family's financial matters would be subject to public scrutiny as a result of SEC registration is uncertain at this time, but presumably such financial matters would be exposed.¹⁸

Historically, families have not been required to register with the SEC under the IAA because of an exemption provided to investment advisers with fewer than 15 clients.¹⁹ However, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub.L. 111-203, H.R. 4173; commonly referred to as the "Dodd-Frank Act") eliminated this exemption effective July 2011, so that the SEC can regulate hedge fund and other private fund advisers. To avoid forcing private family trust companies to register, the Dodd-Frank Act created a new exemption from registration under the IAA for any "family office" and directed the SEC to promulgate rules defining the term family office in a way that is consistent with previous exemptive orders issued by the SEC and recognizes the range of organizational, management, and employment structures employed by family offices.²⁰ The SEC's "family office" rule, which became effective on August 29, 2011, somewhat restrictively defined "family office," and for many families this definition would exclude certain in-laws, aunts and uncles, and cousins.²¹ Thus, a family office serving those individuals would typically fail the SEC's "family office" definition, subjecting it to burdensome SEC registration as an investment adviser.

The family may desire to avoid being subjected to supervision by the SEC, by instead subjecting its trust company to supervision by the state banking regulator. A FTC licensed under Florida law would not be required to register as "an investment adviser," nor would an unlicensed FTC if the unlicensed FTC delegated its investment functions to an investment agent.²² Thus, legislation creating a FTC regulatory structure could exempt Florida FTCs from burdensome federal registration and examination requirements typically reserved for financial institutions serving the public.

As noted above, Florida law does not expressly authorize FTCs. At least 14 other states have laws and regulations governing the organization and operation of FTCs.²³

¹⁵ 15 U.S.C. §80b-2(a)(11)(G).

¹⁶ 15 U.S.C. §80b-2(a)(11).

¹⁷ 15 U.S.C. §§80b-3 and 80b-4.

¹⁸ Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Family Trust Companies Act, new Florida Statutes Chapter 659 and Legislative Position Request Form*, on file with the Insurance & Banking Subcommittee staff.

¹⁹ "SEC Adopts Rule Under Dodd-Frank Act Defining 'Family Offices,'" at <http://www.sec.gov/news/press/2011/2011-134.htm> (last accessed March 11, 2014).

²⁰ Section 409 of the Dodd-Frank Act amended 15 U.S.C. 80b-2(a)(11).

²¹ To be codified at 17 C.F.R. pt. 275.

²² See 15 U.S.C. §80b-2(a)(11)(A)(banks are excluded from the definition of "investment adviser) and 15 U.S.C. §80b-2(a)(2)(C)(defines "bank" to mean a "trust company... a substantial portion of the business which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks...and which is supervised and examined by State or Federal authority having supervision over banks...and which is not operated for the purpose of evading the provision of this subchapter")(emphasis added).

²³ State FTC regulatory schemes have been described as one of three categories: lightly regulated (Alaska, South Dakota, Delaware, and New Hampshire), non-regulated (Virginia, Colorado, and Wyoming), and hybrid (Massachusetts, Nevada, and Wyoming). See fn. 1, *supra*, at 21-22.

Effect of the Bill

The bill creates the Florida Family Trust Company Act (ch. 622, F.S.; "the Act") within the Codes, to address three different types of family trust companies with varying regulatory requirements, which discussed in further detail below.

(Unlicensed) Family trust company

A FTC is a corporation or limited liability company exclusively owned by one or more family members, organized or qualified to do business in Florida, and acts as a fiduciary for one or more family members. A FTC may not serve as a fiduciary for a non-family member, except that it may provide such fiduciary services for up to 35 individuals who are not family members, but who are current or former employees of the FTC or of trusts, companies, or other entities that are family members.

1) *Foreign licensed family trust company*

A foreign licensed FTC has its principal place of business outside of Florida, and is licensed, operating, and supervised by a state other than Florida or by the District of Columbia, and is not owned by or a subsidiary of a business entity that is organized in or licensed by any foreign country as defined by the international banking chapter of the Codes.²⁴

2) *Licensed family trust company*

A licensed FTC operates under a current (not revoked or suspended) license issued by the OFR.

Section 662.111, F.S., creates the following definitions for words and terms used throughout the Act: applicant, authorized representative, capital account, collateral kinship, commercial banking, controlling stockholder or member, designated relative, family affiliate, family member, family trust company, family trust company-affiliated party, financial institutions codes, foreign licensed family trust company, licensed family trust company, lineal kinship, office, officer, and qualified beneficiary.

Section 662.120, F.S., specifies the maximum allowable number of *designated relatives*, which is defined in s. 662.111, F.S., as the persons designated in the application for license, and are against whom degrees of kinship are measured for purposes of determining "*family members*" that comprise licensed and unlicensed FTCs; they can be living or deceased.

- The maximum number of designated relatives for licensed FTCs is two, while the maximum number for unlicensed FTCs is one.
 - This strict limitation on the number of *designated relatives* is to guard against any risk of a FTC being used to provide trust company services to the general public.
- The definition of *family member* is intended to include certain lineal and collateral relatives of the designated relative, certain spouses and former spouses of a family member and certain members of their lineal relatives, family affiliates, certain trusts if all of the qualified beneficiaries are themselves family members or charities, probate estates of family members and certain non-family members, and certain charitable organizations.
 - The definition is intended to include a reasonable number of persons and entities that are related to the designated relative, so as to prevent abuse of the FTC provisions.
 - Licensed FTCs include a larger number of persons in the definition of family member than unlicensed FTCs.

²⁴ See s. 663.01(3), F.S.
STORAGE NAME: h1267c.GOAS
DATE: 3/27/2014

Section 662.112, F.S., describes the calculation for determining degrees of kinship. The degrees are counted by adding the number of steps from a designated relative to the family member.²⁵

- For example, if the designated relative is a grandparent and the family member is a grandchild, the degree of kinship between the individuals is two. This is *lineal kinship*.
- However, if the designated relative is an uncle and the family member is a nephew, the degree of kinship between the individuals is three. This is *collateral kinship*.

Common Requirements for all FTC Types

Section 662.115, F.S., describes the different applications of the Act to a licensed FTC, an unlicensed FTC, and a foreign licensed FTC. All sections of the chapter apply to licensed FTCs and unlicensed FTCs, unless otherwise stated in the sections. Only sections that expressly state that they apply to foreign licensed FTCs shall apply to such foreign licensed FTCs.

Under the bill, all three FTC types are subject to the following:

- Section 662.1225, F.S., which requires:
 - A principal office physically located in Florida, where all records and accounts of the FTC are available for the OFR's examination;²⁶
 - A registered agent with an office in Florida; and
 - All applicable state and local business licenses, charters, and permits.
- Section 662.128, F.S., which requires annual renewal with varying disclosures and renewal fees
 - The renewal fees are \$750 for a FTC, \$1,500 for a licensed FTC, and \$1,000 foreign licensed FTC.
- Section 662.131, F.S., contains a prohibition on all FTC types from engaging in "commercial banking," other than establishing accounts at other financial institutions for their own purposes or on behalf of family members to which it provides services, and from engaging in fiduciary services with the public, unless licensed under ch. 658, F.S., to do so.
- Sections 662.131(3) and (4), F.S., prohibit all FTC types from serving as either a personal representative of any probate estate administered in Florida or an attorney-in-fact or agent under a power of attorney pursuant to ch. 709, F.S.
- Section 662.132(9), F.S., provides that the duty of loyalty provisions in s. 736.0802, F.S., will apply to all FTC types that are serving as a trustee of a trust administered under ch. 736, F.S., only to the extent that such provisions are not inconsistent with Subsections 4 through 8 of this section.
- Section 662.134, F.S., prohibits all FTC types from advertising their services to the public.
- Section 662.141(1), F.S., allows the OFR to examine the books and records of any FTC types at any time to the extent necessary to determine compliance with the Act, and requires the OFR to conduct an examination at least every 18 months.
 - Section 662.141(2), F.S., allows the OFR to accept an audit in lieu of an examination.
 - Subsection (3) requires the FTC being examined to pay examination fees, which shall be deposited into the Financial Institutions' Regulatory Trust Fund. The fee for examination is limited to the costs incurred by the OFR, including the salary and travel expenses directly attributable to any staff conducting the examination. The bill gives the OFR authority to levy administrative fines for late payments of examination fees.
- Section 662.143, F.S., permits the OFR to issue a cease and desist order to any FTC type found to be in violation of any applicable sections of this Act.
- Section 662.144, F.S., which subjects all three FTC types to administrative fines if reports and annual renewals required by this chapter or any rule are not timely filed with the OFR. The bill also provides that such trust company will automatically terminate and revoke if the annual renewal is not provided within 60 days after the end of each calendar year.

²⁵ A "Degrees of Kinship" chart is included in the Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Family Trust Companies Act, new Florida Statutes Chapter 659 and Legislative Position Request Form*, on file with the Insurance & Banking Subcommittee staff.

²⁶ This section permits branch offices within or outside of Florida

- Section 662.146(1), F.S., provides that the books and records of any FTC type are confidential, and may only be examined (1) by the OFR or its duly authorized representative; (2) by any authorized person of the FTC; (3) if compelled by a court or in accordance with state or federal laws, by the party seeking the examination; (4) if compelled by legislative subpoena as provided by law; (5)-as authorized by the board of directors or the managers; or (6) as provided in subsection (2) discussed below.²⁷
- Section 662.146(2), F.S., provides that each customer, stockholder, or member has the right to inspect books and records that pertain to the person's accounts or determination of the person's voting rights. These records will be kept confidential and will only be released with the express authorization of the involved person. However, information may be released without authorization to verify or corroborate the existence or amount of a customer's account if that information is reasonably provided to meet the needs of commerce and to ensure accurate credit information. Any person who willfully violates this section is guilty of a third degree felony.
 - Subsection (2) does not apply to foreign licensed FTCs, as the subsection provides that the law of the foreign licensed FTC's principal jurisdiction will apply to rights to inspection.
- Section 662.146(3), F.S., states that "books and records" includes, but is not limited to, the application and related documents, the initial registration documents of an unlicensed FTC or a foreign licensed FTC, the annual renewal, and any documentation submitted to the OFR related to a licensed FTC discontinuing its business.
- Section 662.147, F.S., sets forth requirements for records relating to the OFR's examination and places limited restrictions on public access.
 - Section 662.147(1), F.S., requires FTCs to keep records of the names and residences of all members.
 - Section 662.147(2), F.S., provides generally that reports of examinations, license applications, investigatory records, and other documentation submitted to the OFR is retained by the OFR for 10 years.
 - Section 662.147(3), F.S., provides that a copy of any document on file with the OFR which is certified by the OFR as being a true copy may be introduced in evidence as if it were the original.
 - Section 662.147(4), F.S., provides for the treatment of confidential records or information used in judicial or administrative proceedings and the procedures for in camera inspection prior to an order to produce such confidential records or information.
- The bill amends existing s. 736.0802, F.S., regarding voidable transactions which violate a trustee's duty of loyalty. This section is amended to allow any FTC type to act a trustee to engage in certain transactions authorized by s. 662.132, F.S., without violating its duty of loyalty.

Licensed vs. Unlicensed Family Trust Companies

A family would likely choose to form a licensed FTC in the event they plan to provide trust or fiduciary services to a large family or two families, desired to avoid SEC regulation, or are of the opinion that a licensed FTC provides greater transfer tax "protection" to the patriarch or matriarch. Also, as the scope of its operations expands, a family with an unlicensed FTC may choose to convert it to a licensed FTC. Currently, families who reside in states which subject trusts to state income tax are forming and operating regulated FTCs in tax-friendly jurisdictions in order to avoid state income taxation. Using a licensed FTC provides a strong nexus to the state which regulates the FTC and should strengthen the case that the trust (and perpetuity) law of that state governs trust administration.

²⁷ This provision is patterned after s. 655.059, F.S., which requires financial institutions to make their books and records confidential. It should be noted that this merely creates a recordkeeping duty on a regulated private entity, and is not an exemption from public records law. Private organizations, such as financial institutions and family trust companies, generally are not subject to the Sunshine Law unless they have been created by a public entity, have been delegated the authority to perform some governmental function, or play an integral part in the decision-making process of a public entity. See art. I, s. 24(a), Fla. Const.; s. 119.01(2), F.S., (defining "agency" to include a private entity that acts on behalf of any public agency; and Attorney General Opinion 07-27.

A family interested in forming an unlicensed FTC might be one who perhaps recently experienced an increase in liquidity (due to the sale of a family business or an initial public offering) and would like to establish a more formal framework for managing family wealth for current and succeeding generations. Traditional trustee options do not suit the family's circumstances. These families may consider it unnecessary to have their family trust affairs supervised by a state regulator. This may be more likely for a close knit family, serving a limited number of family members. In addition, an unlicensed FTC can delegate its investment functions to an investment agent, thereby avoiding having to register with the SEC as an investment adviser.

Section 662.130(1), F.S., lists the powers of a licensed FTC and an unlicensed FTC.

- Subsection 1(a) authorizes a licensed FTC or an unlicensed FTC to serve as a personal representative or curator for an estate administered outside of Florida. Subsection 1(b) authorizes a licensed FTC or an unlicensed FTC to serve as an attorney-in-fact or agent pursuant to a power of attorney, except when such instrument is governed by ch. 709, F.S. (relating to powers of attorney and similar instruments).
- Subsection 1(c) provides the licensed or unlicensed FTC with various permissible trustee activities within or outside this state.
- Subsection 1(d) provides the licensed FTC or the unlicensed FTC with the authority to exercise the powers of a corporation or limited liability company, as the case may be.
- Subsection 1(e) provides the licensed FTC or the unlicensed FTC with the ability to retain agents and to delegate duties and powers, specifically including the ability to retain a public trust company or bank trust department to assist the FTC in carrying out investment and administrative functions.
- Subsection 1(f) provides the licensed FTC or the unlicensed FTC with the power to perform any acts necessary or incidental to effectuate the provisions of this Act and any other Florida laws applicable to the operation of a licensed FTC or an unlicensed FTC.

Specific Requirements for Licensed FTCs

As stated above, s. 662.10, F.S., limits the number of designated relatives for licensed FTCs to two. If a licensed FTC chooses to have two designated relatives, such designated relatives may not have a common ancestor within five generations. According to the bill's proponents, the purposes for allowing two families to form one licensed FTC include:

- Many families own interests in closely-held businesses with other families. For instance, a Florida developer, agriculture business or biotech company may be privately owned by two families, with perhaps this ownership structure being in place for many decades. For the reasons identified above, these families may desire to extend their business arrangement into a licensed FTC to maintain continuity of business dealings through the provision of a shared fiduciary.
- It likely is more cost effective for two families to combine their resources to form and operate one licensed FTC.

Application for licensure and renewal

- Section 662.121, F.S., requires an application for license and a \$10,000 application fee, and sets forth required information to be disclosed in the application, including detailed information on each individual who owns or may vote at least 10% of the proposed licensed FTC and a sworn statement regarding the activities of the proposed FTC and that proposed management has not been subject of specified criminal and regulatory history.
- Section 662.1215, F.S., describes the investigation process the OFR undertakes when an application for a license is filed. The application must have included all the information required and any additional information requested by the OFR during the investigation. The purpose of the investigation is to determine the character and good standing of the FTC's managers as they attested in their application. If the investigation confirms that the applicant meets the requirements, the OFR will issue a license. If the OFR denies the application, it shall serve notice of its intent to

deny the application and the right to request a hearing pursuant to ch. 120, F.S. (the Administrative Procedures Act).

- The bill amends s. 120.80, F.S., providing that in proceedings for a license, an application for a new licensed FTC must be approved or denied within 180 days after receipt of the original application or receipt of timely requested additional information.
- Section 662.128, F.S., requires a licensed FTC to file within 30 days following the last day of the calendar year, an annual renewal application with the OFR, together with an annual renewal fee of \$1,500. The renewal application for licensed FTCs shall set forth that the operations for the calendar year have been in compliance with ch. 896, F.S. and other applicable state and federal laws and regulations, and shall describe any changes in operations, management, designated relatives or principal place of business since the end of the preceding calendar year.

Organizational documents

Section 662.123, F.S., provides the information which must be contained within the organizational documents of a Florida-licensed FTC, including statements that the licensed FTC will not offer services to the general public and will not amend the organizational documents (to allow the company to offer its services to a non-family member) without prior written consent from the OFR. If the term "trust" is included in the name adopted by a FTC, it must be immediately preceded by the term "family" so as to distinguish the entity from a trust company operating under ch. 658, F.S. This section also requires the licensed FTC to seek regulatory approval from the OFR before changing its articles of incorporation, articles of organization, bylaws, or operating documents of a FTC, and provides that using the word "family trust" in a licensed FTC's name will not disqualify the name as a permissible corporate or limited liability company name.

Minimum capital account

Section 662.124(1), F.S., provides that the minimum capital account of a licensed FTC with one designated relative is \$250,000. The minimum capital account of a licensed FTC with two designated relatives in the application for a certificate of authority or in the annual renewal is \$350,000. This section also specifies permissible asset groups in calculating the initial minimum capital account.

Section 662.132, F.S., discusses investments of licensed FTCs:

- Subsection 1(a) describes the type of assets which may be held to form the minimum capital account of the licensed FTC. Generally, the minimum capital account must be retained in liquid investments. Subsection 1(b) states that the aggregate market value of these assets must be at least 100% of the company's required capital account. There is a five day curing period, in the event that the capital account falls below the required minimum.
- Section (2) authorizes a licensed FTC to purchase or rent real or personal property for use in the conduct of the business or other activities of the company.
- Section (3) authorizes a licensed FTC or an unlicensed FTC to invest its funds for its own account, other than the minimum capital account, in any type or character of equity securities, debt securities, or other assets.
- Subsections 4 through 7 set forth certain restrictions and requirements on a licensed FTC or an unlicensed FTC, to the extent it desires to purchase or invest as a fiduciary for a fiduciary estate in securities of which the licensed FTC or unlicensed FTC or a "family affiliate" has an interest.
 - The licensed FTC's or unlicensed FTC's interest in these securities includes: (i) issuance by the licensed FTC or unlicensed FTC; (ii) the underwriting or distribution of these securities by the licensed FTC or unlicensed FTC; and (iii) the licensed FTC or unlicensed FTC providing services to the investment company or investment trust which issued the securities and receiving compensation for these services.
- Subsection (8) lists certain actions a licensed FTC or an unlicensed FTC may perform which are not presumed to be affected by a conflict between the personal and fiduciary interests of the fiduciary. This subsection permits the FTC to interact with and invest in the family business without conflict of interest restrictions.

Management

Section 662.125, F.S., provides that the management of the FTC resides exclusively with the board of directors or managers and provides that there shall not be less than three such directors or managers, and that at least one of the directors or managers must be a resident of the State of Florida. This residency requirement is intended to ensure the FTC has an actual nexus to Florida. The FTC must notify the OFR of a proposed appointment of a member to the board, or the appointment of an individual officer or manager or member acting in managerial capacity at least 60 days before the appointment or employment becomes effective. The OFR is required to issue a notice of disapproval if it finds that the proposed appointment would result in the licensed FTC to be out of compliance with initial licensing requirements.

Fidelity bonds, errors and omissions coverage, other insurance

- Sections 662.126(1) and (2), F.S., generally require a licensed FTC to obtain fidelity bonds totaling not less than \$1,000,000, in connection with the business to indemnify against loss.
- Section 662.126(3), F.S., allows a licensed FTC to increase its minimum capital account by \$1,000,000 instead of obtaining the required fidelity bonds.
- Section 662.126(4), F.S., requires a licensed FTC to obtain errors and omissions insurance policies of not less than \$1,000,000.
- Section 662.126(5), F.S., authorizes licensed FTCs to obtain other insurance policies necessary or desirable in connection with the business of the FTC. These bond and coverage requirements are substantial. In addition, it is important to note that the cost of any loss, error, or omission not covered by a fidelity bond or an errors and omissions insurance policy will be borne solely by the family that owns and is served by the licensed FTC.

Books and records; segregation of assets

- Section 662.127(1), F.S., requires licensed FTCs to maintain their fiduciary books and records separate from other records and to segregate all assets held in any fiduciary capacity from any other assets.
- Section 662.127(2), F.S., provides that the assets received or held by the FTC in a fiduciary capacity are not liable for the debts or obligations of the FTC.

Discontinuation of licensed FTC business

If a licensed FTC desires to discontinue business, Section 662.129, F.S., requires it to furnish to the OFR a resolution of the board authorizing the action.

Oaths, affidavits, and acknowledgements

To the extent a licensed FTC is required to make an oath, affirmation, affidavit or acknowledgment, s. 662.133, F.S., identifies the representatives to perform such acts on behalf of the licensed FTC.

Service as a court-appointed fiduciary; bond requirements

Section 662.135, F.S., expressly provides that a licensed FTC is not required to provide or post bond or other surety to serve as a court-appointed fiduciary in any Florida court proceeding. This section is silent as to unlicensed FTCs, and therefore allows a court's discretion to require that an unlicensed FTC post bond.

Grounds for revocation of license

Section 662.142, F.S., provides for grounds for revocation of the license of a licensed FTC for violating certain sections of the Act, ch. 896, F.S., rules or orders of the commissions, or orders of the OFR, breach of a written agreement with the OFR, prohibited act under s. 662.131, F.S., a failure to provide information or documents to the office upon written request, or an act of the commission or omission or a practice that is a breach of trust or of fiduciary duty.

Removal of FTC-affiliated parties

Section 662.145, F.S., allows the OFR to remove from his or her position any officer, director, manager, member, employee or agent of a FTC who knowingly or willfully neglects to perform any duty required by this Act or other applicable law, or fails to conform to any material requirement made by the OFR.

Guardians and bonding requirements

Currently, s. 744.351, F.S., requires persons appointed as guardians of the property to file a bond. The bill amends this section to coincide with the authority granted under the Act for a licensed FTC to serve as a guardian of the property for family members, without filing a bond.

Specific Requirements for (Unlicensed) FTCs

In addition to the common requirements discussed above, some of the same requirements for licensed FTCs also apply to unlicensed FTCs with some minor differences:

- Section 662.120, F.S., which limits the maximum number of designated relatives to one.
- Section 662.122, F.S., provides that even if a FTC does not wish to be licensed, it must register with the OFR before it begins its operations. The registration includes the name of the designated relative, a statement that the FTC and its operations comply with specific sections of the Act, a current telephone number and street address of the physical location where books and records will be maintained, the name and current street address in the state of its registered agent. In addition, the bill requires a \$5,000 non-refundable registration fee, to be deposited in the Financial Institutions' Regulatory Trust Fund.
- Section 662.123, F.S., which requires regulatory approval prior to any changes to organizational documents.
- Section 662.124, F.S., which requires a capital account of at least \$250,000 and specifies allowable assets to constitute that capital account.
- Section 662.125, F.S., which sets forth management requirements for unlicensed FTCs.
- Section 662.126, F.S., which does not require, but authorizes unlicensed FTCs to maintain fidelity bonds and errors and omissions coverage, as well as any other insurance policies necessary or desirable for the operation of the FTC.
- Section 662.127, F.S., which requires unlicensed FTCs to maintain certain books and records and to segregate their assets.
- Section 662.128, F.S., which requires FTCs to renew their registration with the OFR on an annual basis, along with an annual renewal fee of \$750 and a completed renewal application.
- Section 662.132, F.S., which sets forth permissible investments for both licensed and unlicensed FTCs.
- Section 662.133, F.S., which sets forth provisions regarding oaths, affirmations, and acknowledgements.
- Section 662.135, F.S., expressly provides that a licensed FTC is not required to provide or post bond or other surety to serve as a court-appointed fiduciary in any Florida court proceeding. This section is silent as to unlicensed FTCs, and therefore allows a court's discretion to require that an unlicensed FTC post bond.
- Section 662.141, F.S., which sets forth books and records and examination requirements by the OFR.
- Section 662.145, F.S., regarding removal of FTC-affiliated parties.

Foreign Licensed FTCs

Permitting foreign licensed FTCs will allow FTCs already established in other states to relocate part of their operations to Florida. In addition to the common requirements described above, foreign licensed FTCs must comply with the following specific requirements.

Registration and renewal with the OFR

Like unlicensed FTCs, foreign licensed FTCs must register with the OFR before beginning operations in this state, pay a \$5,000 non-refundable registration fee, and provide the applicable registration-related disclosures set forth in s. 662.122, F.S. A foreign licensed FTC also must state that its operations are in compliance with specific sections of the Act and that it is currently in compliance in its home jurisdiction.

The foreign licensed FTC must also provide a current street address and telephone number of its registered agent, its physical office in its principal jurisdiction, its physical location of books and records in Florida, and any other offices located in Florida. The foreign licensed FTC must also submit a certificate of good standing, and satisfactory proof that the company is organized in a manner similar to a FTC under the Act.

Section 662.1225(2), F.S., lists the requirements for a foreign licensed FTC.

- Must maintain an office in Florida which maintains accessible original material business records and accounts of the foreign licensed FTC which pertain to its Florida operations for examination by the OFR.
- Must maintain (i) a registered agent with an office at a street address in Florida, (ii) deposit account with a Florida branch or principal office of a state chartered or national financial institution, and (iii) all applicable state and local business licenses, charters and permits.

Section 662.128, F.S., requires a foreign licensed FTC to file, within 30 days following the last day of the calendar year, an annual renewal application with the OFR, together with an annual renewal fee of \$1,000 for a foreign licensed FTC. The renewal application for foreign licensed FTCs shall set forth that its operations were in compliance with applicable provisions of chs. 662 and 896, F.S., and other state and federal laws and regulations, and must provide the current street address and telephone number of its registered agent, its physical office in its principal jurisdiction, its principal place of operations in Florida, and any other offices located in Florida.

Section 662.130(2), F.S., allows a foreign licensed FTC to exercise the powers and authorities granted to it under its principal jurisdiction, as well as remaining subject to any duties, restrictions, or limitations under its principal jurisdiction.

The name requirements of s. 662.123, F.S., do not apply to a foreign licensed FTC using a registered fictitious name.

Section 662.150, F.S., describes "domestication" as a foreign licensed FTC's application to become a Florida FTC. The foreign licensed FTC must be in good standing in its primary jurisdiction, and must (1) file with the Department of State a certificate of domestication and articles of incorporation if a corporation or a certificate of conversion and articles of organization if a limited liability company (under either ch. 605 or 608, F.S., as applicable); and (2) file an application for a certificate of authority to commence operations as a licensed FTC or register as an unlicensed FTC. The application or registration may be completed prior to filing with the Department of State; however both requirements must be met before operations are commenced.

Section 662.151, F.S., describes the application for a foreign licensed FTC to commence operations in Florida. This section differs from s. 662.150, F.S., in that it pertains only to foreign FTCs wanting to do business in both Florida and its principal jurisdiction (and perhaps others). Only foreign licensed FTCs are granted this privilege. The foreign licensed FTC must be in good standing in its primary jurisdiction and must (1) file with the Department of State a certificate of authority under chs. 605 or 607, F.S., and (2) file an initial registration to commence operations as a foreign licensed FTC under the requirements of this chapter. The bill requires a company in operation and meeting the definition of a FTC as of the effective date of the Act to apply for licensure or registration under this Act within 90 days of the Act, or to cease doing business in this state.

Section 744.351, F.S., requires persons appointed as guardians of the property to file a bond. This section is amended to coincide with the authority granted under the Act for a foreign licensed FTC to serve as a guardian of the property for family members, without filing a bond.

B. SECTION DIRECTORY:

Section 1 amends s. 655.005, F.S., to revise the definition of the term "financial institutions codes."

Section 2 creates ch. 662, F.S.

Section 3 creates s. 662.10, F.S., to provide a short title.

Section 4 creates s. 662.102, F.S., to provide the purpose of the act.

Section 5 creates s. 662.111, F.S., to define terms.

Section 6 creates s. 662.112, F.S., to provide for the calculation of kinship.

Section 7 creates s. 662.114, F.S., to exempt a family trust company or foreign family trust company from licensure.

Section 8 creates s. 662.115, F.S., to provide for the applicability of the chapter to a family trust company or foreign licensed family trust company.

Section 9 creates s. 662.120, F.S., to specify the maximum number of designated relatives allowed for a family trust company and a licensed family trust company.

Section 10 creates s. 662.121, F.S., to provide procedures for applying for a family trust company license and to require a fee.

Section 11 creates s. 662.1215, F.S., to provide for investigations of applicants by the OFR.

Section 12 creates s. 662.122, F.S., to provide procedures for the registration of a family trust company or a foreign licensed family trust company and to require a fee.

Section 13 creates s. 662.1225, F.S., to provide requirements for a family trust company, licensed family trust company, and foreign licensed family trust company.

Section 14 creates s. 662.123, F.S., to require organizational documents to include certain provisions and to authorize the use of the term "trust."

Section 15 creates s. 662.124, F.S., to require a minimum capital account.

Section 16 creates s. 662.125, F.S., to vest exclusive authority to manage a family trust company or licensed family trust company in a board of directors or managers; to provide for appointment of directors and managers; to require certain notice to the OFR in specified circumstances; and to require the OFR to issue a notice of disapproval of a proposed appointment in specified circumstances.

Section 17 creates s. 662.126, F.S., to require that licensed family trust companies procure and maintain fidelity bonds or specified minimum capital account and errors and omissions insurance; to authorize a family trust company that is not licensed to procure and maintain such coverage; to authorize licensed and unlicensed family trust companies to procure and maintain other insurance policies.

Section 18 creates s. 662.127, F.S., to require certain books and records to be segregated.

Section 19 creates s. 662.128, F.S., to require annual license and registration renewal and to require a fee.

Section 20 creates s. 662.129, F.S., to provide for the discontinuance of a licensed family trust company.

Section 21 creates s. 662.130, F.S., to authorize family trust companies to conduct certain activities on the part of family trust companies.

Section 22 creates s. 662.131, F.S., to prohibit certain activities on the part of family trust companies.

Section 23 creates s. 662.132, F.S., to impose certain requirements on the assets that form the minimum capital of licensed family trust companies and family trust companies; to authorize such trust companies to purchase or rent real or personal property, invest funds, and, while acting as a fiduciary, make certain purchases; to impose a restriction on that authorization; to clarify the degree of prudence required of fiduciaries; to restrict the authority of a fiduciary to purchase certain bonds or securities; to specify additional authority of fiduciaries; and to apply the duty of loyalty to family trust companies in certain cases.

Section 24 creates s. 662.133, F.S., to require certain officers, directors, or managers of a licensed family trust company or a family trust company to make an oath, affirmation, affidavit, or acknowledgment on behalf of the company in certain circumstances.

Section 25 creates s. 662.134, F.S., to prohibit a family trust company from advertising to the public.

Section 26 creates s. 662.135, F.S., to provide that a licensed family trust company is not required to post a bond to serve as a court-appointed fiduciary.

Section 27 creates s. 662.140, F.S., to authorize the OFR to adopt rules.

Section 28 creates s. 662.141, F.S., to authorize the OFR to conduct examinations and investigations; to require that family trust companies be examined at least once every 18 months; to authorize the OFR to accept an independent audit in lieu of conducting an examination; to require the OFR to examine the books and records of a family trust company or licensed family trust company; to authorize the OFR to rely on a certificate of trust, trust summary, or written statement in circumstances; to authorize the commission to adopt rules relating to records and requirements; to authorize the OFR to examine the books and records of a foreign licensed family trust company; to require family trust companies to pay examination fees tied to actual costs incurred by the OFR; and to provide a penalty for late payment and to authorize an administrative fine if late payment is intentional.

Section 29 creates s. 662.142, F.S., to provide for license revocation, to specify acts and conduct that constitute grounds for revocation and to authorize the OFR to suspend a license pending revocation.

Section 30 creates s. 662.143, F.S., to authorize the OFR to issue a cease and desist order and an emergency cease and desist order.

Section 31 creates s. 662.144, F.S., to authorize the OFR to collect fines for the failure to submit required reports.

Section 32 creates s. 662.145, F.S., to provide grounds for the removal of an officer, director, manager, employee, or agent of a licensed family trust company or a family trust company.

Section 33 creates s. 662.146, F.S., to provide for the confidentiality of certain family trust company books and records.

Section 34 creates s. 662.147, F.S., to provide requirements for books and records of family trust companies; to require the OFR to retain certain records for a certain time; to allow the introduction of certain copies into evidence; to require the OFR to establish a schedule of fees for such copies; and to provide requirements for orders issued by courts or administrative law judges for the production of confidential records or information.

Section 35 creates s. 662.150, F.S., to provide for the domestication of a foreign family trust company.

Section 36 creates s. 662.151, F.S., to provide for the registration of a foreign licensed family trust company.

Section 37 amends s. 120.80, F.S., to add licensed family trust companies to the entities regulated by the OFR that are exempted from licensing timeframes under ch. 120, F.S.

Section 38 amends s. 736.0802, F.S., to provide circumstances under which certain trust transactions are not voidable by a beneficiary affected by a transaction; to provide circumstances under which certain transactions involving the investment or management of trust property are not presumed to be affected by conflicts of interest; and to provide an exception.

Section 39 amends s. 744.351, F.S., to exempt a family trust company from certain bond requirements and to apply those requirements to licensed family trust companies and foreign licensed family trust companies.

Section 40 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Revenues generated as a result of the regulatory requirements of the bill will be deposited into the Financial Institutions' Regulatory Trust Fund (trust fund) within the OFR and stem from an application fee at initial licensure and the renewal of a license, in addition to any administrative fines and penalties the OFR may impose for the late submittal of payment for examination costs, the late submittal of an annual renewal, and the late submittal of any report prescribed by rule or required by ch. 662, F.S.

The OFR projects that ten to twelve FTCs will apply for licensure in the first year, generating a projected \$100,000 to \$120,000 in additional revenue to be deposited into the trust fund in the first year. In addition, a projection of one to three FTCs will apply for licensure in subsequent years. The OFR also projects that annual license renewals will generate an additional \$15,000 to \$18,000 annually to be deposited into the trust fund²⁸. These estimates are based on the fee structure provided in the bill, which is as follows:

- Initial application fees (\$5,000 for FTCs (corp. or LLC) and foreign licensed FTCs; and \$10,000 for licensed FTCs);
- Annual renewal fees (\$750 for FTCs (corp. or LLC); \$1,500 for licensed FTCs; and \$1,000 for foreign licensed FTCs);

²⁸ Office of Financial Regulation bill analysis (March 24, 2014) on file with the Government Operations Appropriations Subcommittee.

- Fines for the late submittal of payment for examination costs (if unintentional, up to \$100 per day; and if found to be intentional, up to \$1,000 per day);
- Fines for the late submittal of an annual renewal or any report prescribed by rule or required by ch. 662, F.S. (up to \$100 per day, until termination of registration or revocation of license at 60 days past due); and
- Any "costs" associated with an examination that accrue while examining FTCs books and records that will be paid by licensees and registrants.

2. Expenditures:

The OFR projects that in order to conduct examinations, process applications and provide regulatory oversight of licensed trust companies, there is an immediate need for three full-time equivalent positions. The OFR's estimate of need for three new positions is as follows:

Salaries and Benefits	\$195,633
Recurring Expenses	\$19,542
Nonrecurring Expenses	\$11,319
<u>DMS - Human Resources Service Contract</u>	<u>\$1,032</u>
Total—FY 2014-15	\$227,526²⁹

However, the bill provides that any examination "costs" accrued while fulfilling the regulatory requirements of examining the books and records of FTCs shall be borne by the trust company under examination. The "costs" that accrue during examination would be the salary and travel expenses of field staff that are directly attributable to the examination of the FTC in addition to the travel expenses of any supervisory or support staff required as a result of examination findings.

In addition, the proposed bill will increase legal case load associated with de novo applications and administrative actions involving family trust companies, licensed family trust companies, and foreign licensed family trust companies. However, the OFR indicates that existing OFR legal resources will be sufficient to absorb any increase in case load as a result of the bill³⁰.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's proponents expect that as a result of this legislation, high net worth families who are not located in Florida may select Florida as the jurisdiction to establish FTCs, which may benefit the investment, accounting, legal and advisory support services for these FTCs and family businesses.³¹

D. FISCAL COMMENTS:

None.

²⁹ Office of Financial Regulation bill analysis (March 24, 2014) on file with the Government Operations Appropriations Subcommittee.

³⁰ *Id.*

³¹ Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Family Trust Companies Act, new Florida Statutes Chapter 659 and Legislative Position Request Form*, on file with the Insurance & Banking Subcommittee staff.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides general rulemaking authority (section 27), specific rulemaking authority to establish required records to be maintained to demonstrate conformity as a FTC or licensed FTC, and specific rulemaking authority to address notification to affiliated parties regarding the rescission or modification of orders of suspension or prohibition.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Estate and Trust Planning Committee of the Real Property, Probate, & Trust Law Section and the Tax Law Section of the Florida Bar support this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2014, the Insurance & Banking Subcommittee considered and adopted four technical amendments and reported the bill favorably as a committee substitute. The amendments made the following changes:

- Clarified that the Act is to be included within the Financial Institutions Codes,
- Inserted language providing for the treatment of confidential records or information in judicial or administrative proceedings from the linked public records bill (HB 1269) into this bill,
- Clarified the definition of "capital account" and ensures consistent use of the term throughout the Act,
- Clarified the definition of "foreign licensed family trust company,"
- Clarified the definition of "officer,"
- Provided clearer disqualification for management,
- Inserted cross-references for licensed family trust companies,
- Clarified that registration fees are non-refundable,
- Clarified the permissible use of "trust" in a family trust company's name,
- Provided for proposed changes to a limited liability company's operating documents,
- Clarified the OFR's grounds for disapproving a proposed member or manger,
- Removed the authority of the OFR to obtain criminal history information,
- Clarified that licensees and registrants to certify compliance with other applicable state and federal laws and regulations,
- Clarified that the powers of any family trust company type apply as to its eligible members and individuals,
- Provided parameters for trustee activities on behalf of a family trust company,
- Clarified a ground for licensure revocation,
- Removed language providing for limited confidentiality of emergency orders by the OFR, which will be inserted in the linked public records bill (HB 1269),

- Substituted "annual renewal" for "annual certification,"
- Provided rulemaking authority for the Financial Services Commission instead of the OFR, and
- Provided companies operating as a family trust company as of the bill's effective date to seek licensure or registration within 90 days of the bill's effective date.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

27 family trust company, and foreign licensed family
 28 trust company; creating s. 662.123, F.S.; requiring
 29 organizational documents to include certain
 30 provisions; authorizing the use of the term "trust";
 31 creating s. 662.124, F.S.; requiring a minimum capital
 32 account; creating s. 662.125, F.S.; vesting exclusive
 33 authority to manage a family trust company or licensed
 34 family trust company in a board of directors or
 35 managers; providing for appointment of directors and
 36 managers; requiring certain notice to the office in
 37 specified circumstances; requiring the office to issue
 38 a notice of disapproval of a proposed appointment in
 39 specified circumstances; creating s. 662.126, F.S.;
 40 requiring that licensed family trust companies procure
 41 and maintain fidelity bonds or specified minimum
 42 capital account and errors and omissions insurance;
 43 authorizing a family trust company that is not
 44 licensed to procure and maintain such coverage;
 45 authorizing licensed and unlicensed family trust
 46 companies to procure and maintain other insurance
 47 policies; creating s. 662.127, F.S.; requiring certain
 48 books and records to be segregated; creating s.
 49 662.128, F.S.; requiring annual license and
 50 registration renewal; requiring a fee; creating s.
 51 662.129, F.S.; providing for the discontinuance of a
 52 licensed family trust company; creating s. 662.130,

53 F.S.; authorizing family trust companies to conduct
 54 certain activities; creating s. 662.131, F.S.;
 55 prohibiting certain activities on the part of family
 56 trust companies; creating s. 662.132, F.S.; imposing
 57 certain requirements on the assets that form the
 58 minimum capital of licensed family trust companies and
 59 family trust companies; authorizing such trust
 60 companies to purchase or rent real or personal
 61 property, invest funds, and, while acting as a
 62 fiduciary, make certain purchases; imposing a
 63 restriction on that authorization; clarifying the
 64 degree of prudence required of fiduciaries;
 65 restricting the authority of a fiduciary to purchase
 66 certain bonds or securities; specifying additional
 67 authority of fiduciaries; applying the duty of loyalty
 68 to family trust companies in certain cases; creating
 69 s. 662.133, F.S.; requiring certain officers,
 70 directors, or managers of a licensed family trust
 71 company or a family trust company to make an oath,
 72 affirmation, affidavit, or acknowledgment on behalf of
 73 the company in certain circumstances; creating s.
 74 662.134, F.S.; prohibiting a family trust company from
 75 advertising to the public; creating s. 662.135, F.S.;
 76 providing that a licensed family trust company is not
 77 required to post a bond to serve as a court-appointed
 78 fiduciary; creating s. 662.140, F.S.; authorizing the

79 | commission to adopt rules; creating s. 662.141, F.S.;

80 | authorizing the office to conduct examinations and

81 | investigations; requiring that family trust companies

82 | be examined at least once every 18 months; authorizing

83 | the office to accept an independent audit in lieu of

84 | conducting an examination; requiring the office to

85 | examine the books and records of a family trust

86 | company or licensed family trust company; authorizing

87 | the office to rely on a certificate of trust, trust

88 | summary, or written statement in certain

89 | circumstances; authorizing the commission to adopt

90 | rules relating to records and requirements;

91 | authorizing the office to examine the books and

92 | records of a foreign licensed family trust company;

93 | requiring family trust companies to pay examination

94 | fees tied to actual costs incurred by the office;

95 | providing a penalty for late payment and authorizing

96 | an administrative fine if late payment is intentional;

97 | creating s. 662.142, F.S.; providing for license

98 | revocation; specifying acts and conduct that

99 | constitute grounds for revocation; authorizing the

100 | office to suspend a license pending revocation;

101 | creating s. 662.143, F.S.; authorizing the office to

102 | issue a cease and desist order and an emergency cease

103 | and desist order; creating s. 662.144, F.S.;

104 | authorizing the office to collect fines for the

105 failure to submit required reports; creating s.
 106 662.145, F.S.; providing grounds for the removal of an
 107 officer, director, manager, employee, or agent of a
 108 licensed family trust company or a family trust
 109 company; creating s. 662.146, F.S.; providing for the
 110 confidentiality of certain company books and records;
 111 creating s. 662.147, F.S.; providing requirements for
 112 books and records of family trust companies; requiring
 113 the office to retain certain records for a specified
 114 time; allowing the introduction of certain copies into
 115 evidence; requiring the office to establish a schedule
 116 of fees for such copies; providing requirements for
 117 orders issued by courts or administrative law judges
 118 for the production of confidential records or
 119 information; creating s. 662.150, F.S.; providing for
 120 the domestication of a foreign family trust company;
 121 creating s. 662.151, F.S.; providing for the
 122 registration of a foreign licensed family trust
 123 company; amending s. 120.80, F.S.; adding licensed
 124 family trust companies to the entities regulated by
 125 the office that are exempted from licensing timeframes
 126 under ch. 120, F.S.; amending s. 736.0802, F.S.;
 127 providing circumstances under which certain trust
 128 transactions are not voidable by a beneficiary
 129 affected by a transaction; providing circumstances
 130 under which certain transactions involving the

131 investment or management of trust property are not
 132 presumed to be affected by conflicts of interest;
 133 providing an exception; amending s. 744.351, F.S.;
 134 exempting a family trust company from certain bond
 135 requirements and applying those requirements to
 136 licensed family trust companies and foreign licensed
 137 family trust companies; providing a contingent
 138 effective date.

139

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

141

142 Section 1. Paragraph (k) of subsection (1) of section
 143 655.005, Florida Statutes, is amended to read:

144 655.005 Definitions.—

145 (1) As used in the financial institutions codes, unless
 146 the context otherwise requires, the term:

147 (k) "Financial institutions codes" means:

148 1. Chapter 655, relating to financial institutions
 149 generally;

150 2. Chapter 657, relating to credit unions;

151 3. Chapter 658, relating to banks and trust companies;

152 4. Chapter 660, relating to trust business;

153 5. Chapter 662, relating to family trust companies;

154 6.5. Chapter 663, relating to international banking;

155 7.6. Chapter 665, relating to associations; and

156 8.7. Chapter 667, relating to savings banks.

157 Section 2. Chapter 662, Florida Statutes, consisting of
 158 ss. 662.10-662.151, Florida Statutes, to be entitled Family
 159 Trust Companies, is created.

160 Section 3. Section 662.10, Florida Statutes, is created to
 161 read:

162 662.10 Short Title.—This chapter may be cited as the
 163 "Florida Family Trust Company Act."

164 Section 4. Section 662.102, Florida Statutes, is created
 165 to read:

166 662.102 Purpose.—The purpose of the Family Trust Company
 167 Act is to establish requirements for licensing family trust
 168 companies, to provide regulation of those persons who provide
 169 fiduciary services to family members of no more than two
 170 families and their related interests as a family trust company,
 171 and establish the degree of regulatory oversight required of the
 172 Office of Financial Regulation over such companies. Unlike trust
 173 companies formed under chapter 658, there is no public interest
 174 to be served outside of ensuring that fiduciary activities
 175 performed by a family trust company are restricted to family
 176 members and their related interests and as otherwise provided
 177 for in this chapter. Therefore, family trust companies are not
 178 financial institutions within the meaning of the financial
 179 institutions codes and licensure of these companies pursuant to
 180 chapters 658 and 660 should not be required as it would not
 181 promote the purposes of the codes as set forth in s. 655.001.
 182 Consequently, the Office of Financial Regulation is not

183 responsible for regulating family trust companies to ensure
 184 their safety and soundness, and the responsibility of the office
 185 is limited to ensuring that fiduciary services provided by such
 186 companies are restricted to family members and related interests
 187 and not to the general public.

188 Section 5. Section 662.111, Florida Statutes, is created
 189 to read:

190 662.111 Definitions.—As used in this chapter, the term:

191 (1) "Applicant" means the corporation or limited liability
 192 company on whose behalf an application for a license to operate
 193 as a licensed family trust company is submitted under s.
 194 662.121.

195 (2) "Authorized representative" means an officer or
 196 director of a family trust company, licensed family trust
 197 company, or foreign licensed family trust company, if organized
 198 as a corporation; or a manager, officer, or member of a family
 199 trust company, licensed family trust company, or foreign
 200 licensed family trust company, if organized as a limited
 201 liability company.

202 (3) "Capital account" means the aggregate value of
 203 unimpaired capital stock based on the par value of the shares,
 204 plus any unimpaired surplus and undivided profits or retained
 205 earnings of a family trust company organized as a corporation;
 206 or the initial cash investment remitted for membership interests
 207 in a family trust company organized as a limited liability
 208 company, plus any undivided profits or retained earnings of the

209 limited liability company.

210 (4) "Capital stock" means the shares of stock issued to
 211 create nonwithdrawable capital for a corporation, or membership
 212 interests issued to create nonwithdrawable capital for a limited
 213 liability company.

214 (5) "Collateral kinship" means a relationship that is not
 215 lineal but derives from a common ancestor.

216 (6) "Commercial banking" means the business of receiving
 217 demand and time deposits, paying checks, or lending money to the
 218 public.

219 (7) "Controlling stockholder or member" means an
 220 individual who owns or has the ability or power to directly or
 221 indirectly vote at least 10 percent or more of the outstanding
 222 shares, membership interest, or membership units of the family
 223 trust company or licensed family trust company.

224 (8) "Designated relative" means a common ancestor of a
 225 family, who may be a living or deceased person, and who is so
 226 designated in the application for a license or annual license.

227 (9) "Family affiliate" means a company or other entity in
 228 which one or more family members own, control, or have the power
 229 to directly or indirectly vote more than 50 percent of a class
 230 of voting securities of that company or other entity.

231 (10) "Family member" means:

232 (a) A designated relative.

233 (b) A person within the fourth degree of lineal kinship to
 234 a designated relative of a family trust company, or a person

235 within the sixth degree of lineal kinship to a designated
 236 relative of a licensed family trust company.

237 (c) A person within the seventh degree of collateral
 238 kinship to a designated relative of a family trust company, or a
 239 person within the ninth degree of collateral kinship to a
 240 designated relative of a licensed family trust company.

241 (d) The spouse or former spouse of an individual
 242 qualifying as a family member and an individual who is within
 243 the fifth degree of lineal kinship to that spouse or former
 244 spouse.

245 (e) A family affiliate.

246 (f) A trust established by a family member if the trust is
 247 funded exclusively by one or more family members. A trust to
 248 which property has been transferred as a result of a family
 249 member's exercise of a power of appointment shall be deemed
 250 established by that family member if all qualified beneficiaries
 251 of the appointee trust are family members.

252 (g) A trust established by an individual who is not a
 253 family member if all of the noncharitable qualified
 254 beneficiaries of the trust are family members, except that a
 255 trust composed exclusively of nonindividual qualified
 256 beneficiaries is considered to be a family member if all of the
 257 nonindividual qualified beneficiaries are charitable foundations
 258 or other charitable entities as described in paragraph (j).

259 (h) The probate estate of a family member.

260 (i) The probate estate of an individual who is not a

261 family member if all of the noncharitable beneficiaries of the
 262 estate are family members, except that an estate composed
 263 exclusively of nonindividual beneficiaries is considered to be a
 264 family member if all of the nonindividual beneficiaries are
 265 charitable foundations or other charitable entities as described
 266 in paragraph (j).

267 (j) A charitable foundation or other charitable entity in
 268 which a majority of the governing body is composed of family
 269 members.

270 (11) "Family trust company" means a corporation or limited
 271 liability company that:

272 (a) Is exclusively owned by one or more family members.

273 (b) Is organized or qualified to do business in this
 274 state.

275 (c) Acts or proposes to act as a fiduciary to serve one or
 276 more family members.

277 (d) Does not serve as a fiduciary for a person, entity,
 278 trust, or estate that is not a family member, except that it may
 279 serve as a fiduciary for up to 35 individuals who are not family
 280 members if the individuals are current or former employees of
 281 the family trust company or one or more trusts, companies, or
 282 other entities that are family members.

283 (12) "Family trust company-affiliated party" means:

284 (a) A director, officer, manager, employee, or controlling
 285 stockholder or member of a family trust company, licensed family
 286 trust company, or foreign licensed family trust company; or

287 (b) A stockholder, member, or any other person as
 288 determined by the office who participates in the affairs of a
 289 family trust company, licensed family trust company, or foreign
 290 licensed family trust company.

291 (13) "Financial institutions codes" has the same meaning
 292 as provided in s. 655.005(1).

293 (14) "Foreign licensed family trust company" means a
 294 family trust company that:

295 (a) Is licensed by a state in the United States other than
 296 this state or the District of Columbia.

297 (b) Has its principal place of business in a state in the
 298 United States other than this state or the District of Columbia.

299 (c) Is operated in accordance with family or private trust
 300 company laws of the state in which it is licensed or of the
 301 District of Columbia.

302 (d) Is subject to statutory or regulatory mandated
 303 supervision by the state in which the principal place of
 304 business is located or by the District of Columbia.

305 (e) Is not owned by, or a subsidiary of, a corporation,
 306 limited liability company, or other business entity that is
 307 organized in or licensed by any foreign country as defined in s.
 308 663.01(3).

309 (15) "Licensed family trust company" means a family trust
 310 company that operates in accordance with this chapter and has
 311 been issued a license that has not been revoked or suspended by
 312 the office.

313 (16) "Lineal kinship" means a family member who is in the
 314 direct line of ascent or descent from a designated relative.

315 (17) "Office" means the Office of Financial Regulation.

316 (18) "Officer" of a family trust company means an
 317 individual, regardless of whether the individual has an official
 318 title or receives a salary or other compensation, who may
 319 participate in the major policymaking functions of a family
 320 trust company, other than as a director. The term does not
 321 include an individual who may have an official title and
 322 exercise discretion in the performance of duties and functions,
 323 but who does not participate in determining the major policies
 324 of the family trust company and whose decisions are limited by
 325 policy standards established by other officers, regardless of
 326 whether the policy standards have been adopted by the board of
 327 directors. The chair of the board of directors, the president,
 328 the chief officer, the chief financial officer, the senior trust
 329 officer, and all executive vice presidents of a family trust
 330 company, and all managers if organized as a limited liability
 331 company, are presumed to be executive officers unless such
 332 officer is excluded, by resolution of the board of directors or
 333 members or by the bylaws or operating agreement of the family
 334 trust company, other than in the capacity of a director, from
 335 participating in major policymaking functions of the family
 336 trust company, and the individual holding such office so
 337 excluded does not actually participate therein.

338 (19) "Qualified beneficiary" has the same meaning as

339 | provided in s. 736.0103.

340 | Section 6. Section 662.112, Florida Statutes, is created
341 | to read:

342 | 662.112 Degrees of kinship.—Degrees of kinship shall be
343 | calculated by adding the number of steps from a designated
344 | relative through each person to the family member, directly in
345 | the case of lineal kinship, or through the common ancestor in
346 | the case of collateral kinship.

347 | Section 7. Section 662.114, Florida Statutes, is created
348 | to read:

349 | 662.114 Family trust company and foreign licensed family
350 | trust company licensing not required.—A family trust company or
351 | foreign licensed family trust company is not required to be a
352 | licensed family trust company.

353 | Section 8. Section 662.115, Florida Statutes, is created
354 | to read:

355 | 662.115 Applicability of chapter to a family trust company
356 | or foreign licensed family trust company.—

357 | (1) A family trust company that is not a licensed family
358 | trust company or a foreign licensed family trust company is
359 | subject to the provisions of this chapter unless the provisions
360 | are expressly limited in applicability to a licensed family
361 | trust company or foreign licensed family trust company.

362 | (2) A licensed family trust company is subject to the
363 | provisions of this chapter that expressly refer to a licensed
364 | family trust company or that are not expressly limited to a

365 family trust company that is not a licensed family trust company
 366 or to a foreign licensed family trust company.

367 (3) A foreign licensed family trust company is subject to
 368 the provisions of this chapter that expressly state that such
 369 provisions apply to a foreign licensed family trust company.

370 Section 9. Section 662.120, Florida Statutes, is created
 371 to read:

372 662.120 Maximum number of designated relatives.-

373 (1) A family trust company may not have more than one
 374 designated relative.

375 (2) A licensed family trust company may not have more than
 376 two designated relatives, and the designated relatives may not
 377 have a common ancestor within five generations.

378 Section 10. Section 662.121, Florida Statutes, is created
 379 to read:

380 662.121 Application for licensed family trust company;
 381 fees.-An applicant seeking to operate as a licensed family trust
 382 company must file an application with the office on forms
 383 prescribed by the office, accompanied by a nonrefundable \$10,000
 384 application fee to be deposited into the Financial Institutions'
 385 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of
 386 administering this chapter. The application must contain or be
 387 accompanied by:

388 (1) The name of the proposed licensed family trust
 389 company.

390 (2) A copy of the articles of incorporation or articles of

391 organization and the bylaws or operating agreement of the
 392 proposed licensed family trust company.

393 (3) The physical address and mailing address of the
 394 proposed licensed family trust company, which must be located in
 395 this state.

396 (4) A statement describing in detail the services that
 397 will be provided to family members by the proposed licensed
 398 family trust company.

399 (5) The name and biographical information of each
 400 individual who will initially serve as a director, officer,
 401 manager, or member acting in a managerial capacity of the
 402 proposed licensed family trust company.

403 (6) The name and biographical information of each
 404 individual who owns or has the ability or power to directly or
 405 indirectly vote at least 10 percent or more of the outstanding
 406 shares, membership interest, or membership units of the proposed
 407 licensed family trust company.

408 (7) The names of the designated relatives.

409 (8) The amount of the initial capital account of the
 410 proposed licensed family trust company and the form in which the
 411 capital was paid and will be maintained.

412 (9) The type and amount of bonds or insurance that will be
 413 procured and maintained on directors, officers, managers, or
 414 members acting in a managerial capacity or employees pursuant to
 415 s. 662.126.

416 (10) A statement signed by the applicant, or by the

417 individual signing on behalf of the proposed licensed family
 418 trust company, under penalty of perjury, affirming that the
 419 following statements are true:

420 (a) The proposed licensed family trust company is not
 421 currently transacting business with the general public.

422 (b) No director, officer, manager, or member served as a
 423 director, officer, or manager, or acted in a managerial
 424 capacity, for a trust company or any other financial institution
 425 that had a license issued under the financial institutions codes
 426 or by the Federal Government or any other state, the District of
 427 Columbia, a territory of the United States, or a foreign country
 428 that was suspended or revoked within the 10 years preceding the
 429 date of the application.

430 (c) No director, officer, manager, or member acting in a
 431 managerial capacity has been convicted of, pled guilty or nolo
 432 contendere, regardless of whether adjudication of guilt is
 433 entered by the court, to a violation of the financial
 434 institutions codes, including s. 655.50, chapter 896, or similar
 435 state or federal law or related rule, or to a crime involving
 436 fraud, misrepresentation, or moral turpitude.

437 (d) No director, officer, manager, or member acting in a
 438 managerial capacity has had a professional license suspended or
 439 revoked within the 10 years preceding the date of the
 440 application.

441 (e) All information contained in the application is true
 442 and correct to the best knowledge of the individual signing the

443 application on behalf of the proposed licensed family trust
 444 company.

445 (11) Any other additional information reasonably required
 446 by the office.

447 Section 11. Section 662.1215, Florida Statutes, is created
 448 to read:

449 662.1215 Investigation of license applicants.-

450 (1) For the purpose of this section, the application is
 451 not deemed to be filed until the applicant has provided the
 452 office with all information required to be included pursuant to
 453 s. 662.121.

454 (2) Upon filing an application for a license to operate as
 455 a licensed family trust company, the office shall conduct an
 456 investigation to confirm:

457 (a) That the persons who will serve as directors or
 458 officers of the corporation or, if the applicant is a limited
 459 liability company, managers or members acting in a managerial
 460 capacity, have not:

461 1. Been convicted of, or entered a plea of nolo contendere
 462 to, a crime involving fraud, misrepresentation, or moral
 463 turpitude;

464 2. Been convicted of, or pled nolo contendere to, a
 465 violation of the financial institutions codes, including s.
 466 655.50, chapter 896, or similar state or federal law;

467 3. Been directors, officers, managers, or members of a
 468 financial institution licensed or chartered under the financial

469 institution's codes or by the Federal Government or any other
 470 state, the District of Columbia, a territory of the United
 471 States, or a foreign country, whose license or charter was
 472 suspended or revoked within the 10 years preceding the date of
 473 the application;

474 4. Had a professional license suspended or revoked within
 475 the 10 years preceding the date of the application; or

476 5. Made a false statement of material fact on the
 477 application.

478 (b) That the name of the proposed company complies with s.
 479 662.123.

480 (c) That capital accounts of the proposed company conform
 481 to s. 662.124 and that fidelity bonds and errors and omissions
 482 insurance coverage required under s. 662.126 are issued and
 483 effective.

484 (d) That the articles of incorporation or articles of
 485 organization conform to s. 662.123(1).

486 (3) If the investigation required under this section
 487 confirms that the applicant has met the requirements of ss.
 488 662.1225, 662.123(1), 662.124, 662.125, and 662.126, and that
 489 the persons who will serve as directors or officers of the
 490 corporation or the managers or members acting in a managerial
 491 capacity of the limited liability company, as applicable,
 492 satisfy the criteria set forth in subsection (2), the office
 493 shall issue a license authorizing the applicant to operate as a
 494 licensed family trust company.

495 (4) If the office determines the criteria in subsection
 496 (2) have not been met, the office shall serve notice of its
 497 intent to deny the application and of the applicant's
 498 opportunity to request a hearing pursuant to ss. 120.569 and
 499 120.57.

500 Section 12. Section 662.122, Florida Statutes, is created
 501 to read:

502 662.122 Registration of a family trust company or a
 503 foreign licensed family trust company.-

504 (1) A family trust company that is not applying under s.
 505 662.121 to become a licensed family trust company must register
 506 with the office before beginning operations in this state. The
 507 registration application must:

508 (a) Provide the name of the designated relative.

509 (b) State that the family trust company is a family trust
 510 company as defined under this chapter and that its operations
 511 will comply with ss. 662.1225, 662.125, 662.131, and 662.134.

512 (c) Provide the current telephone number and street
 513 address of the physical location in this state of its principal
 514 place of operations where its books and records will be
 515 maintained.

516 (d) List the name and current street address in this state
 517 of its registered agent.

518 (2) A foreign licensed family trust company must register
 519 with the office before beginning operations in this state.

520 (a) The registration application must state that its

521 | operations will comply with ss. 662.1225, 662.125, 662.131, and
 522 | 662.134 and that it is currently in compliance with the family
 523 | trust company laws and regulations of its principal
 524 | jurisdiction.

525 | (b) The registration application must provide:

526 | 1. The current telephone number and street address of the
 527 | physical location of its principal place of business in its
 528 | principal jurisdiction.

529 | 2. The current telephone number and street address of the
 530 | physical location in this state of its principal place of
 531 | operations where its books and records pertaining to its
 532 | operations in this state will be maintained.

533 | 3. The current telephone number and street address of the
 534 | physical location of any other offices located within this
 535 | state.

536 | 4. The name and current street address in this state of
 537 | its registered agent.

538 | (c) The registration must include a certified copy of a
 539 | certificate of good standing, or an equivalent document,
 540 | authenticated by the official having custody of records in the
 541 | jurisdiction where the foreign licensed family trust company is
 542 | organized, along with satisfactory proof that the company is
 543 | organized in a manner similar to a family trust company as
 544 | defined under this chapter.

545 | (3) The registration application required under this
 546 | section for a family trust company and a foreign licensed family

547 trust company must be accompanied by a nonrefundable
 548 registration fee of \$5,000.

549 (4) Registration applications required by this section
 550 shall be submitted on a form prescribed by the office and be
 551 signed, under penalty of perjury, by an officer or director if
 552 the family trust company is organized as a corporation, or by a
 553 manager, officer, or member if the family trust company is
 554 organized as a limited liability company.

555 (5) All fees received by the office pursuant to this
 556 section shall be deposited into the Financial Institutions'
 557 Regulatory Trust Fund pursuant to s. 655.049 for purposes of
 558 administering this chapter.

559 Section 13. Section 662.1225, Florida Statutes, is created
 560 to read:

561 662.1225 Requirements for a family trust company, licensed
 562 family trust company, and foreign licensed family trust
 563 company.-

564 (1) A family trust company and a licensed family trust
 565 company shall maintain:

566 (a) A principal office physically located in this state
 567 where original or true copies of all records and accounts of the
 568 family trust company or licensed family trust company may be
 569 accessed and made readily available for examination by the
 570 office in accordance with this chapter. A family trust company
 571 or licensed family trust company may also maintain one or more
 572 branch offices within or outside of this state.

573 (b) A registered agent who has an office in this state at
 574 the street address of the registered agent.

575 (c) All applicable state and local business licenses,
 576 charters, and permits.

577 (d) A deposit account with a state-chartered or national
 578 financial institution that has a principal or branch office in
 579 this state.

580 (2) In order to operate in this state, a foreign licensed
 581 family trust company must be in good standing in its principal
 582 jurisdiction and maintain:

583 (a) An office physically located in this state where
 584 original or true copies of all records and accounts of the
 585 foreign licensed family trust company pertaining to its
 586 operations in this state may be accessed and made readily
 587 available for examination by the office in accordance with this
 588 chapter.

589 (b) A registered agent who has an office in this state at
 590 the street address of the registered agent.

591 (c) All applicable state and local business licenses,
 592 charters, and permits.

593 (d) A deposit account with a state-chartered or national
 594 financial institution that has a principal or branch office in
 595 this state.

596 Section 14. Section 662.123, Florida Statutes, is created
 597 to read:

598 662.123 Organizational documents; use of term "family

599 | trust" in name.-

600 | (1) The articles of incorporation, certificate of
 601 | incorporation, or articles of organization of a family trust
 602 | company or licensed family trust company must contain:

603 | (a) The name adopted by the company, which must
 604 | distinguish the company from any other trust company formed in
 605 | this state or engaged in the business of a trust company, family
 606 | trust company, or licensed family trust company in this state.
 607 | If the term "trust" is included in the name adopted by a family
 608 | trust company, it must be immediately preceded by the term
 609 | "family" so as to distinguish the entity from a trust company
 610 | operating under chapter 658. This paragraph does not apply to a
 611 | foreign licensed family trust company using a fictitious name,
 612 | that is registered and maintained pursuant to s. 865.09 and that
 613 | distinguishes it.

614 | (b) The purpose for which the company is formed, which
 615 | must clearly identify the restricted activities permissible to a
 616 | family trust company or licensed family trust company under this
 617 | chapter.

618 | (c) A statement that the company will not offer its
 619 | services to the general public.

620 | (d) A statement affirming that the articles of
 621 | incorporation, certificate of incorporation, or articles of
 622 | organization will not be amended without prior written notice to
 623 | the office.

624 | (2) A proposed amendment to the articles of incorporation,

625 articles of organization, bylaws, or operating documents of a
 626 limited liability company, family trust company, or licensed
 627 family trust company must be submitted to the office for review
 628 at least 30 days before it is filed or effective. An amendment
 629 is not considered filed or effective if the office issues a
 630 notice of disapproval with respect to the proposed amendment.

631 (3) The term "family trust" in the name adopted by a
 632 family trust company or licensed family trust company does not
 633 disqualify the name from being allowed under s. 605.0112 or s.
 634 607.0401.

635 Section 15. Section 662.124, Florida Statutes, is created
 636 to read:

637 662.124 Minimum capital account required.-

638 (1) A licensed family trust company that has one
 639 designated relative may not be organized or operated with an
 640 owners' capital account of less than \$250,000. The minimum
 641 capital account shall be increased to \$350,000 if two designated
 642 relatives of the licensed family trust company are named in the
 643 application for a license or in the annual license renewal. A
 644 family trust company may not be organized or operated with a
 645 capital account of less than \$250,000.

646 (2) The full amount of the initial capital account of a
 647 family trust company or licensed family trust company must be
 648 composed of one or more of the asset groups described in s.
 649 662.132(1)(a), exclusive of all organization expenses.

650 Section 16. Section 662.125, Florida Statutes, is created

651 to read:

652 662.125 Directors or managers.-

653 (1) Exclusive authority to manage a family trust company
 654 or licensed family trust company is vested in a board of
 655 directors, if a corporation, or a board of directors or
 656 managers, if a limited liability company.

657 (2) A family trust company or licensed family trust
 658 company shall have at least three directors, if a corporation,
 659 or three directors or managers, if a limited liability company.
 660 At least one director or manager of the company must be a
 661 resident of this state.

662 (3) The licensed family trust company shall notify the
 663 office of the proposed appointment of an individual to the board
 664 of directors or addition as a member, or the appointment or
 665 employment of an individual as an officer or manager or member
 666 acting in a managerial capacity or equivalent position, at least
 667 60 days before such appointment or employment becomes effective,
 668 if the company:

669 (a) Has been licensed for less than 2 years.

670 (b) Has undergone a change in control within the preceding
 671 2 years.

672 (c) Is operating under a cease and desist order.

673
 674 The notification must include the name and such biographical
 675 information as the office may reasonably require.

676 (4) A licensed family trust company may not appoint an

677 individual to the board of directors, add a member, or appoint
 678 or employ an officer or manager or member acting in a managerial
 679 capacity or equivalent, if the office issues a notice of
 680 disapproval with respect to that person.

681 (5) The office shall issue a notice of disapproval if the
 682 office finds that the proposed appointment or employment of a
 683 person would otherwise cause the licensed family trust company
 684 to violate any of the requirements set forth in s.
 685 662.121(10)(b)-(d) or s. 662.1215(2)(a).

686 Section 17. Section 662.126, Florida Statutes, is created
 687 to read:

688 662.126 Fidelity bonds; insurance.-

689 (1) The directors or managers of a licensed family trust
 690 company shall procure and maintain fidelity bonds on all active
 691 officers, directors, managers, members acting in a managerial
 692 capacity, and employees of the company, regardless of whether
 693 they receive a salary or other compensation from the company, in
 694 order to indemnify the company against loss because of a
 695 dishonest, fraudulent, or criminal act or omission on their
 696 part, whether acting alone or in combination with other persons.

697 (2) Each fidelity bond shall be issued in an amount of at
 698 least \$1 million.

699 (3) In lieu of the fidelity bonds required under
 700 subsection (1), a licensed family trust company may increase its
 701 capital account required under s. 662.124 by \$1 million so that
 702 if it has one designated relative it is organized or operated

703 | with a capital account of at least \$1.25 million, or if it has
 704 | two designated relatives it is organized or operated with a
 705 | capital account of at least \$1.35 million.

706 | (4) The licensed family trust company shall also procure
 707 | and maintain an errors and omissions insurance policy of at
 708 | least \$1 million in which it is listed as the insured to cover
 709 | the acts and omissions of officers, directors, managers, and
 710 | members acting in a managerial capacity, regardless of whether
 711 | the person receives a salary or other compensation from the
 712 | company.

713 | (5) A family trust company or licensed family trust
 714 | company may also procure and maintain other insurance policies
 715 | necessary or desirable in connection with the business of the
 716 | company, including, but not limited to, one or more casualty
 717 | insurance policies.

718 | (6) A family trust company that is not a licensed family
 719 | trust company may procure and maintain fidelity bonds as
 720 | described in this section.

721 | (7) A family trust company that is not a licensed family
 722 | trust company may procure and maintain errors and omissions
 723 | insurance coverage as described in this section.

724 | Section 18. Section 662.127, Florida Statutes, is created
 725 | to read:

726 | 662.127 Segregation of books, records, and assets;
 727 | fiduciary assets not liable.-

728 | (1) Each family trust company and licensed family trust

729 company shall maintain its fiduciary books and records separate
 730 and distinct from other records of the company and shall
 731 segregate all assets held in any fiduciary capacity from other
 732 assets of the company.

733 (2) Assets received or held in a fiduciary capacity by a
 734 family trust company or licensed family trust company are not
 735 subject to the debts or obligations of the company.

736 Section 19. Section 662.128, Florida Statutes, is created
 737 to read:

738 662.128 Annual renewal.-

739 (1) Within 30 days after the end of each calendar year,
 740 family trust companies, licensed family trust companies, and
 741 foreign licensed family trust companies shall file their annual
 742 renewal application with the office.

743 (2) The license renewal application filed by a licensed
 744 family trust company must include a verified statement that:

745 (a) The licensed family trust company operated in full
 746 compliance with this chapter, chapter 896, or similar state or
 747 federal law, or any related rule or regulation. The application
 748 must include proof acceptable to the office that the company is
 749 a family trust company as defined under this chapter.

750 (b) Describes any material changes to its operations,
 751 principal place of business, directors, officers, managers,
 752 members acting in a managerial capacity, and designated
 753 relatives since the end of the preceding calendar year.

754 (3) The registration renewal application filed by a family

755 trust company must include a verified statement by an officer of
756 the company that it is a family trust company as defined under
757 this chapter and that its operations are in compliance with ss.
758 662.1225, 662.125, 662.131, and 662.134; chapter 896; or similar
759 state or federal law, or any related rule or regulation, and
760 include the name of its designated relative or relatives, if
761 applicable, and the street address for its principal place of
762 business.

763 (4) The registration renewal application filed by a
764 foreign licensed family trust company must include a verified
765 statement that its operations are in compliance with ss.
766 662.1225, 662.125, 662.131, and 662.134 and in compliance with
767 the family trust company laws and regulations of its principal
768 jurisdiction. It must also provide:

769 (a) The current telephone number and street address of the
770 physical location of its principal place of business in its
771 principal jurisdiction.

772 (b) The current telephone number and street address of the
773 physical location in this state of its principal place of
774 operations where its books and records pertaining to its
775 operations in this state are maintained.

776 (c) The current telephone number and address of the
777 physical location of any other offices located in this state.

778 (d) The name and current street address in this state of
779 its registered agent.

780 (e) Documentation satisfactory to the office that the

781 foreign licensed family trust company is in compliance with the
 782 family trust company laws and regulations of its principal
 783 jurisdiction.

784 (5) The annual renewal application shall be submitted on a
 785 form prescribed by the office and signed under penalty of
 786 perjury by an authorized representative.

787 (6) A fee of \$750 for a family trust company, \$1,500 for a
 788 licensed family trust company, and \$1,000 for a foreign licensed
 789 family trust company shall be submitted with the annual renewal
 790 application. All fees received by the office pursuant to this
 791 section shall be deposited into the Financial Institutions'
 792 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of
 793 administering this chapter.

794 Section 20. Section 662.129, Florida Statutes, is created
 795 to read:

796 662.129 Discontinuing business.—If a licensed family trust
 797 company desires to discontinue business as a licensed family
 798 trust company, it must file with the office a certified copy of
 799 the resolution of the board of directors, or members, if a
 800 limited liability company, authorizing that action. Upon
 801 discharge from all fiduciary duties which it has undertaken, the
 802 licensed family trust company shall provide certification of
 803 such discharge and voluntarily relinquish its license to operate
 804 as a licensed family trust company to the office, whereupon it
 805 shall be released from any fidelity bonds that it maintained
 806 pursuant to s. 662.126(1).

807 Section 21. Section 662.130, Florida Statutes, is created
 808 to read:

809 662.130 Powers of family trust companies, licensed family
 810 trust companies, and foreign licensed family trust companies.-

811 (1) A family trust company and a licensed family trust
 812 company may, for its eligible members and individuals:

813 (a) Act as a sole or copersonal representative, executor,
 814 or curator for probate estates being administered in a state or
 815 jurisdiction other than this state.

816 (b) Act as an attorney-in-fact or agent under a power of
 817 attorney, other than a power of attorney governed by chapter
 818 709.

819 (c) Except as provided in s. 662.131, act within or
 820 outside this state as a sole fiduciary or cofiduciary, including
 821 acting as a trustee, advisory agent, assignee, assignee for the
 822 benefit of creditors, authenticating agent, bailee, bond or
 823 indenture trustee, conservator, conversion agent, custodian,
 824 escrow agent, fiscal or paying agent, financial advisor,
 825 guardian, investment advisor or manager, managing agent,
 826 purchase agent, receiver, registrar, safe keeping or
 827 subscription agent, transfer agent, except for public companies,
 828 warrant agent, or similar capacities generally performed by
 829 corporate trustees, and in so acting possess, purchase, sell,
 830 invest, reinvest, safe keep, or otherwise manage or administer
 831 the real or personal property of eligible members and
 832 individuals.

833 (d) Exercise the powers of a corporation or limited
 834 liability company incorporated or organized under the laws of
 835 this state, or qualified to transact business as a foreign
 836 corporation or limited liability company under the laws of this
 837 state, which are reasonably necessary to enable it to fully
 838 exercise, in accordance with commonly accepted customs and
 839 usages, a power conferred under this chapter.

840 (e) Delegate duties and powers, including investment
 841 functions under s. 518.112, in accordance with the powers
 842 granted to a trustee under chapter 736 or other applicable law,
 843 and retain agents, attorneys, accountants, investment advisers,
 844 or other individuals or entities to advise or assist the family
 845 trust company, licensed family trust company, or foreign
 846 licensed family trust company in the exercise of its powers and
 847 duties under this chapter and chapter 736. Such exercise of
 848 power may include, but is not limited to, retaining a bank trust
 849 department, or a public trust company, other than another family
 850 trust company, licensed family trust company, or foreign
 851 licensed family trust company.

852 (f) Perform all acts necessary for exercising the powers
 853 enumerated in this section or authorized by this chapter and
 854 other applicable laws of this state.

855 (2) Except as otherwise provided in s. 662.131, a foreign
 856 licensed family trust company that is in good standing in its
 857 principal jurisdiction may exercise all the trust powers in this
 858 state that a Florida family trust company may exercise.

859 Section 22. Section 662.131, Florida Statutes, is created
 860 to read:

861 662.131 Prohibitions.—Notwithstanding any provision of
 862 this chapter, a family trust company, licensed family trust
 863 company, or foreign licensed family trust company may not:

864 (1) Engage in commercial banking; however, it may
 865 establish accounts at financial institutions for its own
 866 purposes or on behalf of family members to whom it provides
 867 services pursuant to this chapter.

868 (2) Engage in fiduciary services with the public unless
 869 licensed pursuant to chapter 658.

870 (3) Serve as a personal representative or a copersonal
 871 representative of a probate estate administered in this state.

872 (4) Serve as an attorney in fact or agent, including as a
 873 co-attorney in fact or co-agent, under a power of attorney
 874 pursuant to chapter 709.

875 Section 23. Section 662.132, Florida Statutes, is created
 876 to read:

877 662.132 Investments.—

878 (1) The assets forming the minimum capital account of a
 879 family trust company or licensed family trust company must:

880 (a) Consist of cash, United States Treasury obligations,
 881 or any combination thereof.

882 (b) Have an aggregate market value of at least 100 percent
 883 of the company's required capital account, as specified in s.
 884 662.124. If the aggregate market value of 100 percent of the

885 company's capital account is, at any time, less than the amount
 886 required under s. 662.124, the company has 5 business days to
 887 bring such capital account into compliance with s. 662.124.

888 (2) A family trust company or licensed family trust
 889 company may purchase or rent real or personal property for use
 890 in the conduct of the business and other activities of the
 891 company.

892 (3) Notwithstanding any other provision of law, a family
 893 trust company or licensed family trust company may invest funds
 894 for its own account, other than those required or allowed under
 895 subsection (1) or subsection (2), in any type or character of
 896 equity securities, debt securities, or other assets.

897 (4) Notwithstanding any other law, a family trust company
 898 or licensed family trust company may, while acting as a
 899 fiduciary, purchase directly from underwriters or distributors
 900 or in the secondary market:

901 (a) Bonds or other securities underwritten or distributed
 902 by:

903 1. The family trust company or licensed family trust
 904 company;

905 2. A family affiliate; or

906 3. A syndicate, including the family trust company,
 907 licensed family trust company, or family affiliate.

908 (b) Securities of an investment company, including a
 909 mutual fund, closed-end fund, or unit investment trust, as
 910 defined under the federal Investment Company Act of 1940, for

911 which the family trust company or licensed family trust company
 912 acts as an advisor, custodian, distributor, manager, registrar,
 913 shareholder servicing agent, sponsor, or transfer agent.

914 (5) The authority granted in subsection (4) may be
 915 exercised only if:

916 (a) The investment is not expressly prohibited by the
 917 instrument, judgment, decree, or order establishing the
 918 fiduciary relationship.

919 (b) The family trust company or licensed family trust
 920 company procures in writing the consent of any cofiduciaries
 921 with discretionary investment powers to the investment.

922 (c) The family trust company or licensed family trust
 923 company discloses in writing to the person or persons to whom it
 924 sends account statements its intent to exercise the authority
 925 granted in subsection (4) before the first exercise of that
 926 authority, and each such disclosure reflects:

927 1. The nature of any interest the family trust company or
 928 licensed family trust company has, or is reasonably expected to
 929 have, in the underwriting or distribution of bonds or securities
 930 purchased.

931 2. The nature and amount of any fee or other compensation
 932 received, or reasonably expected to be received, by the family
 933 trust company or licensed family trust company in connection
 934 with the transaction.

935 3. The nature of the relationship between the family trust
 936 company or licensed family trust company and an investment

937 company described in paragraph (4) (b).

938 4. The nature and amount of any fee or other compensation
 939 received, or reasonably expected to be received, by the family
 940 trust company or licensed family trust company for providing
 941 services to an investment company described in paragraph (4) (b).

942 (6) Subsections (4) and (5) do not affect the degree of
 943 prudence required of fiduciaries under the laws of this state.

944 However, a purchase of bonds or securities pursuant to
 945 subsections (4) and (5) is not presumed to be affected by a
 946 conflict between the fiduciary's personal and fiduciary
 947 interests if such purchase:

948 (a) Is negotiated at a fair price.

949 (b) Is in accordance with:

950 1. The interest of the qualified beneficiaries.

951 2. The purposes of the trusts.

952 (c) Otherwise complies with:

953 1. The prudent investor rule in s. 518.11, or other
 954 prudent investor or similar rule under other applicable law,
 955 unless such compliance is waived in accordance with s. 518.11 or
 956 other applicable law.

957 2. The terms of the instrument, judgment, decree, or order
 958 establishing the fiduciary relationship.

959 (7) Notwithstanding subsections (1)-(6), a family trust
 960 company or licensed family trust company may not, while acting
 961 as a fiduciary, purchase a bond or security issued by the
 962 company or an affiliate thereof unless:

963 (a) The family trust company or licensed family trust
 964 company is expressly authorized to do so by:
 965 1. The terms of the instrument creating the trust;
 966 2. A court order;
 967 3. The written consent of the settlor of the trust for
 968 which the family trust company or licensed family trust company
 969 is serving as trustee; or
 970 4. The written consent of every adult qualified
 971 beneficiary of the trust who, at the time of such purchase, is
 972 entitled to receive income under the trust or who would be
 973 entitled to receive a distribution of principal if the trust
 974 were terminated; and
 975 (b) The purchase of the security is at a fair price and
 976 complies with:
 977 1. The prudent investor rule in s. 518.11, or other
 978 prudent investor or similar rule under other applicable law,
 979 unless such compliance is waived in accordance with s. 518.11 or
 980 other applicable law.
 981 2. The terms of the instrument, judgment, decree, or order
 982 establishing the fiduciary relationship.
 983 (8) Except as otherwise expressly limited by this section,
 984 a family trust company or licensed family trust company, while
 985 acting as a fiduciary, is also authorized, without limiting any
 986 powers otherwise conferred on fiduciaries by law, to do any of
 987 the following, which are not presumed to be affected by a
 988 conflict between the fiduciary's personal and fiduciary

989 | interests:

990 | (a) Make an equity investment in a closely held entity
 991 | that may or may not be marketable and that is directly or
 992 | indirectly owned or controlled by one or more family members.

993 | (b) Place a security transaction using a broker who is a
 994 | family member.

995 | (c) Enter into an agreement with a family member who is
 996 | the settlor or a qualified beneficiary of a trust with respect
 997 | to the appointment of the family trust company or licensed
 998 | family trust company as a fiduciary of the trust, or with
 999 | respect to the compensation of the family trust company and
 1000 | licensed family trust company for service as a fiduciary.

1001 | (d) Transact business with a family member.

1002 | (e) Transact business with or invest in any asset of
 1003 | another trust, estate, guardianship, or conservatorship for
 1004 | which the family trust company or licensed family trust company
 1005 | is a fiduciary or in which a family member has an interest.

1006 | (f) Deposit trust assets in a financial institution that
 1007 | is owned, controlled, or operated by one or more family members.

1008 | (g) Purchase, sell, hold, own, or invest in a security,
 1009 | bond, real or personal property, stock, or other asset of a
 1010 | family member.

1011 | (h) With or without adequate security, lend money to or
 1012 | borrow money from a family member or a trust, estate, or
 1013 | guardianship for which the family trust company or licensed
 1014 | family trust company serves as a fiduciary.

1015 (9) If not inconsistent with and subject to the terms of
 1016 subsections (4)-(8), the duty of loyalty under s. 736.0802
 1017 applies to family trust companies, licensed family trust
 1018 companies, and foreign licensed family trust companies when
 1019 serving as trustee of a trust whose administration is subject to
 1020 chapter 736.

1021 Section 24. Section 662.133, Florida Statutes, is created
 1022 to read:

1023 662.133 Oaths, affidavits, and acknowledgments.—If a
 1024 family trust company or licensed family trust company is
 1025 required to make an oath, affirmation, affidavit, or
 1026 acknowledgment regarding a fiduciary capacity in which it is
 1027 acting or is preparing to act, a director or officer or, if the
 1028 company is a limited liability company, a manager or officer
 1029 expressly authorized by the family trust company or licensed
 1030 family trust company, shall make and, if required, subscribe to
 1031 such oath, affirmation, affidavit, or acknowledgment on behalf
 1032 of the company.

1033 Section 25. Section 662.134, Florida Statutes, is created
 1034 to read:

1035 662.134 Unlawful to advertise services.—A family trust
 1036 company, licensed family trust company, or foreign licensed
 1037 family trust company may not advertise its services to the
 1038 public.

1039 Section 26. Section 662.135, Florida Statutes, is created
 1040 to read:

1041 662.135 Service as court-appointed fiduciary; bond
1042 requirement.—A licensed family trust company is not required to
1043 provide or otherwise post a bond or other surety to serve as a
1044 court-appointed fiduciary in a proceeding brought or conducted
1045 in this state.

1046 Section 27. Section 662.140, Florida Statutes, is created
1047 to read:

1048 662.140 Rules.—The commission may adopt rules necessary to
1049 carry out the purposes of this chapter.

1050 Section 28. Section 662.141, Florida Statutes, is created
1051 to read:

1052 662.141 Examination, investigations, and fees.—The office
1053 may conduct an examination or investigation of a family trust
1054 company, licensed family trust company, or foreign licensed
1055 family trust company at any time it deems necessary to determine
1056 whether a family trust company, licensed family trust company,
1057 foreign licensed family trust company, or family trust company-
1058 affiliated person has violated or is about to violate any
1059 provision of the financial institution's codes or the rules
1060 adopted by the commission pursuant to such codes.

1061 (1) The office shall conduct an examination of a licensed
1062 family trust company, family trust company, and foreign licensed
1063 family trust company at least once every 18 months.

1064 (2) In lieu of an examination by the office, the office
1065 may accept an audit of a family trust company, licensed family
1066 trust company, or foreign licensed family trust company by a

1067 certified public accountant licensed to practice in this state
 1068 who is independent of the company, or other person or entity
 1069 acceptable to the office. If the office accepts an audit
 1070 pursuant to this subsection, the office shall conduct the next
 1071 required examination.

1072 (3) The office shall examine the books and records of a
 1073 family trust company or licensed family trust company as
 1074 necessary to determine whether it is a family trust company or
 1075 licensed family trust company as defined in this chapter, and is
 1076 operating in compliance with ss. 662.1225, 662.125, 662.126,
 1077 662.131 and 662.134, as applicable. The office may rely upon a
 1078 certificate of trust, trust summary, or written statement from
 1079 the trust company identifying the qualified beneficiaries of any
 1080 trust or estate for which the family trust company serves as a
 1081 fiduciary and the qualification of the qualified beneficiaries
 1082 as permissible recipients of company services. The commission
 1083 may establish by rule the records to be maintained or
 1084 requirements necessary to demonstrate conformity with this
 1085 chapter as a family trust company or licensed family trust
 1086 company.

1087 (4) The office shall examine the books and records of a
 1088 foreign licensed family trust company as necessary to determine
 1089 if it is a foreign licensed trust company as defined in this
 1090 chapter and is in compliance with ss. 662.1225, 662.125,
 1091 662.130(2), 662.131, and 662.134. In connection with an
 1092 examination of the books and records of the company, the office

1093 may rely upon the most recent examination report or review or
 1094 certification letters or similar documentation issued by the
 1095 regulatory agency to which the foreign licensed family trust
 1096 company is subject to supervision. The commission may establish
 1097 by rule the records to be maintained or requirements necessary
 1098 to demonstrate conformity with this chapter as a foreign
 1099 licensed family trust company. The office's examination of the
 1100 books and records of a foreign licensed family trust company is,
 1101 to the extent practicable, limited to books and records of the
 1102 operations in this state.

1103 (5) For each examination of the books and records of a
 1104 family trust company, licensed family trust company, or foreign
 1105 licensed family trust company as authorized under this chapter,
 1106 the trust company shall pay a fee for the costs of the
 1107 examination by the office. As used in this section, the term
 1108 "costs" means the salary and travel expenses of field staff
 1109 which are directly attributable to the examination of the trust
 1110 company and the travel expenses of any supervisory or support
 1111 staff required as a result of examination findings. The mailing
 1112 of payment for costs incurred must be postmarked within 30 days
 1113 after the receipt of a notice stating that such costs are due.
 1114 The office may levy a late payment of up to \$100 per day or part
 1115 thereof that a payment is overdue, unless waived for good cause.
 1116 However, if the late payment of costs is intentional, the office
 1117 may levy an administrative fine of up to \$1,000 per day for each
 1118 day the payment is overdue.

1119 (6) All fees collected under this section must be
 1120 deposited into the Financial Institutions' Regulatory Trust Fund
 1121 pursuant to s. 655.049 for the purpose of administering this
 1122 chapter.

1123 Section 29. Section 662.142, Florida Statutes, is created
 1124 to read:

1125 662.142 Revocation of license.-

1126 (1) The following acts or conduct constitute grounds for
 1127 the revocation by the office of the license of a licensed family
 1128 trust company:

1129 (a) The company is not a family trust company as defined
 1130 in this chapter;

1131 (b) A violation of s. 662.1225, s. 662.123(1)(a), s.
 1132 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, s.
 1133 662.131, s. 662.134, or s. 662.144;

1134 (c) A violation of chapter 896, relating to financial
 1135 transactions offenses, or any similar state or federal law or
 1136 any related rule or regulation;

1137 (d) A violation of any rule of the commission;

1138 (e) A violation of any order of the office;

1139 (f) A breach of any written agreement with the office;

1140 (g) A prohibited act or practice under s. 662.131;

1141 (h) A failure to provide information or documents to the
 1142 office upon written request; or

1143 (i) An act of commission or omission that is judicially
 1144 determined to be a breach of trust or of fiduciary duty pursuant

1145 to a court of competent jurisdiction.

1146 (2) Upon a finding that a licensed family trust company
 1147 has committed any of the acts set forth in paragraphs (1)(a)-
 1148 (h), the office may enter an order suspending the company's
 1149 license and provide notice of its intention to revoke the
 1150 license and of the opportunity for a hearing pursuant to ss.
 1151 120.569 and 120.57. If there has been a commission or omission
 1152 under paragraph (1)(i), the office may immediately enter an
 1153 order revoking the license. The licensed family trust company
 1154 shall have 90 days to wind up its affairs after license
 1155 revocation. If after 90 days the company is still in operation,
 1156 the office may seek an order from the circuit court for the
 1157 annulment or dissolution of the company.

1158 Section 30. Section 662.143, Florida Statutes, is created
 1159 to read:

1160 662.143 Cease and desist authority.-

1161 (1) The office may issue and serve upon a family trust
 1162 company, licensed family trust company, or foreign licensed
 1163 family trust company, or upon a family trust company-affiliated
 1164 party, a complaint stating charges if the office has reason to
 1165 believe that such company, family trust company-affiliated
 1166 party, or individual named therein is engaging in or has engaged
 1167 in conduct that:

1168 (a) Indicates that the company is not a family trust
 1169 company or foreign licensed family trust company as defined in
 1170 this chapter;

1171 (b) Is a violation of s. 662.1225, s. 662.123(1)(a), s.
 1172 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or
 1173 s. 662.134;

1174 (c) Is a violation of any rule of the commission;

1175 (d) Is a violation of any order of the office;

1176 (e) Is a breach of any written agreement with the office;

1177 (f) Is a prohibited act or practice pursuant to s.
 1178 662.131;

1179 (g) Is a willful failure to provide information or
 1180 documents to the office upon written request;

1181 (h) Is an act of commission or omission or a practice that
 1182 the office has reason to believe is a breach of trust or of
 1183 fiduciary duty; or

1184 (i) Is a violation of chapter 896 or similar state or
 1185 federal law or any related rule or regulation.

1186 (2) The complaint must contain the statement of facts and
 1187 a notice of opportunity for a hearing pursuant to ss. 120.569
 1188 and 120.57.

1189 (3) If no hearing is requested within the time allowed by
 1190 ss. 120.569 and 120.57, or if a hearing is held and the office
 1191 finds that any of the charges are true, the office may enter an
 1192 order directing the family trust company, licensed family trust
 1193 company, or foreign licensed family trust company, or family
 1194 trust company-affiliated party, or the individual named therein
 1195 to cease and desist from engaging in the conduct complained of
 1196 and to take corrective action.

1197 (4) If the family trust company, licensed family trust
 1198 company, foreign licensed family trust company, or family trust
 1199 company-affiliated party, or the individual named in such order,
 1200 fails to respond to the complaint within the time allotted in
 1201 ss. 120.569 and 120.57, such failure constitutes a default and
 1202 justifies the entry of a cease and desist order.

1203 (5) A contested or default cease and desist order is
 1204 effective when reduced to writing and served upon the family
 1205 trust company, licensed family trust company, or foreign
 1206 licensed family trust company, or family trust company-
 1207 affiliated party, or the individual named therein. An
 1208 uncontested cease and desist order is effective as agreed.

1209 (6) If the office finds that conduct described in
 1210 subsection (1) is likely to cause substantial prejudice to
 1211 members, shareholders, or beneficiaries of fiduciary accounts of
 1212 the family trust company, licensed family trust company, or
 1213 foreign licensed family trust company, or to beneficiaries of
 1214 services rendered by such company, it may issue an emergency
 1215 cease and desist order requiring the family trust company,
 1216 licensed family trust company, or foreign licensed family trust
 1217 company, family trust company-affiliated party, or individual
 1218 named therein to immediately cease and desist from engaging in
 1219 the conduct complained of and to take corrective action. The
 1220 emergency order is effective immediately upon service of a copy
 1221 of the order upon the family trust company, licensed family
 1222 trust company, or foreign licensed family trust company, or

1223 family trust company-affiliated party and remains effective for
 1224 90 days. If the office begins nonemergency cease and desist
 1225 proceedings under subsection (1), the emergency order remains
 1226 effective until the conclusion of the proceedings under ss.
 1227 120.569 and 120.57.

1228 (7) A family trust company or foreign licensed family
 1229 trust company shall have 90 days to wind up its affairs after
 1230 entry of any order to cease and desist from operating as a
 1231 family trust company or foreign licensed family trust company.
 1232 If, after 90 days, a family trust company is still operating,
 1233 the office may seek an order from the circuit court for the
 1234 annulment or dissolution of the company. If after 90 days a
 1235 foreign licensed family trust company is still operating, the
 1236 office may seek an injunction from the circuit court restraining
 1237 the company from continuing to operate in this state.

1238 Section 31. Section 662.144, Florida Statutes, is created
 1239 to read:

1240 662.144 Failure to submit required report; fines.—If a
 1241 family trust company, licensed family trust company, or foreign
 1242 licensed family trust company fails to submit within the
 1243 prescribed period its annual renewal or any other report
 1244 required by this chapter or any rule, the office may impose a
 1245 fine of up to \$100 for each day that the annual renewal or
 1246 report is overdue. Failure to provide the annual renewal within
 1247 60 days after the end of the calendar year shall automatically
 1248 result in termination of registration of a family trust company

1249 or revocation of the license of a licensed family trust company.
 1250 The trust company shall thereafter have 90 days to wind up its
 1251 affairs.

1252 Section 32. Section 662.145, Florida Statutes, is created
 1253 to read:

1254 662.145 Grounds for removal.-

1255 (1) The office may issue and serve upon a licensed family
 1256 trust company or a family trust company and a family trust
 1257 company-affiliated party a complaint stating charges if the
 1258 office has reason to believe that the family trust company-
 1259 affiliated party is engaging or has engaged in conduct that:

1260 (a) Demonstrates that the company is not a family trust
 1261 company as defined in this chapter;

1262 (b) Is a prohibited act or practice under s. 662.131;

1263 (c) Is a violation of s. 662.1225, s. 662.123(1)(a), s.
 1264 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134;

1265 (d) Is a violation of any other law involving fraud or
 1266 moral turpitude which constitutes a felony;

1267 (e) Is a violation of chapter 896, relating to offenses
 1268 related to financial transactions, or similar state or federal
 1269 law;

1270 (f) Is a willful violation of a rule of the commission;

1271 (g) Is a willful violation of an order of the office;

1272 (h) Is a willful breach of a written agreement with the
 1273 office; or

1274 (i) Is an act of commission or omission or a practice that

1275 the office has reason to believe is a breach of trust or
 1276 fiduciary duty.

1277 (2) The complaint must contain a statement of facts and a
 1278 notice of opportunity for a hearing pursuant to ss. 120.569 and
 1279 120.57.

1280 (3) If no hearing is requested within the time allowed by
 1281 ss. 120.569 and 120.57, or if a hearing is held and the office
 1282 finds that any of the charges in the complaint is true, the
 1283 office may enter an order removing the family trust company-
 1284 affiliated party or restricting or prohibiting participation by
 1285 the family trust company-affiliated party in the affairs of the
 1286 family trust company, licensed family trust company, or state
 1287 financial institution, subsidiary, or service corporation.

1288 (4) If the family trust company-affiliated party fails to
 1289 respond to the complaint within the time allowed in ss. 120.569
 1290 and 120.57, such failure constitutes a default and justifies the
 1291 entry of an order of removal.

1292 (5) A contested or default order of removal is effective
 1293 when reduced to writing and served on the family trust company
 1294 or licensed family trust company and the family trust company-
 1295 affiliated party. An uncontested order of removal is effective
 1296 as agreed.

1297 (6) The chief executive officer, or the person holding the
 1298 equivalent office, of a family trust company or licensed family
 1299 trust company shall promptly notify the office if he or she has
 1300 actual knowledge that a family trust company-affiliated party is

1301 charged with a felony in a state or federal court.
 1302 (a) If a family trust company-affiliated party is charged
 1303 with a felony in a state or federal court, or in the courts of a
 1304 foreign country with which the United States maintains
 1305 diplomatic relations which involves a violation of law relating
 1306 to fraud, currency transaction reporting, money laundering,
 1307 theft, or moral turpitude and the charge is equivalent to a
 1308 felony charge under state or federal law, the office may enter
 1309 an emergency order suspending the family trust company-
 1310 affiliated party or restricting or prohibiting participation by
 1311 such company-affiliated party in the affairs of that particular
 1312 family trust company or licensed family trust company or any
 1313 financial institution, subsidiary, or service corporation, upon
 1314 service of the order upon the company and the family trust
 1315 company-affiliated party so charged.
 1316 (b) The order must contain notice of opportunity for a
 1317 hearing pursuant to ss. 120.569 and 120.57, at which the family
 1318 trust company-affiliated party may request a postsuspension
 1319 hearing to show that continued service to or participation in
 1320 the affairs of the family trust company or licensed family trust
 1321 company does not pose a threat to the interests of the company.
 1322 In accordance with applicable commission rules, the office shall
 1323 notify the family trust company-affiliated party whether the
 1324 order suspending or prohibiting the company-affiliated party
 1325 from participating in the affairs of a licensed family trust
 1326 company or family trust company, or state financial institution,

1327 subsidiary, or service corporation will be rescinded or
 1328 otherwise modified. The emergency order remains in effect,
 1329 unless otherwise modified by the office, until the criminal
 1330 charge is disposed of. The acquittal of the family trust
 1331 company-affiliated party charged, or the final, unappealed
 1332 dismissal of all charges against such person, dissolves the
 1333 emergency order, but does not prohibit the office from
 1334 instituting proceedings under subsection (1). If the family
 1335 trust company-affiliated party charged is convicted or pleads
 1336 guilty or nolo contendere, regardless of adjudication, the
 1337 emergency order becomes final.

1338 (7) A family trust company-affiliated party removed from
 1339 office pursuant to this section is not eligible for reelection
 1340 to such position or to any official position in a family trust
 1341 company, licensed family trust company, or financial institution
 1342 in this state except with the written consent of the office. A
 1343 family trust company-affiliated party who is removed,
 1344 restricted, or prohibited from participation in the affairs of a
 1345 family trust company, licensed family trust company, or state
 1346 financial institution pursuant to this section may petition the
 1347 office for modification or termination of such removal,
 1348 restriction, or prohibition.

1349 (8) The resignation, termination of employment or
 1350 participation, or separation from a family trust company or a
 1351 licensed family trust company of the family trust company-
 1352 affiliated party does not affect the jurisdiction and authority

1353 of the office to issue a notice and proceed under this section
 1354 against the company-affiliated party if such notice is served
 1355 before the end of the 6-year period beginning on the date such
 1356 person ceases to be a family trust company-affiliated party with
 1357 respect to such company.

1358 Section 33. Section 662.146, Florida Statutes, is created
 1359 to read:

1360 662.146 Confidentiality of books and records.-

1361 (1) The books and records of a family trust company,
 1362 licensed family trust company, and foreign licensed family trust
 1363 company are confidential and shall be made available for
 1364 inspection and examination only:

- 1365 (a) To the office or its authorized representative;
- 1366 (b) To any person authorized to act for the company;
- 1367 (c) As compelled by a court, pursuant to a subpoena issued
 1368 pursuant to the Florida Rules of Civil Procedure, the Florida
 1369 Rules of Criminal Procedure, or the Federal Rules of Civil
 1370 Procedure or pursuant to a subpoena issued in accordance with
 1371 state or federal law. Before the production of the books and
 1372 records of a family trust company, licensed family trust
 1373 company, or foreign licensed family trust company, the party
 1374 seeking production must reimburse the company for the reasonable
 1375 costs and fees incurred in compliance with the production. If
 1376 the parties disagree regarding the amount of reimbursement, the
 1377 party seeking the records may request the court having
 1378 jurisdiction to set the amount of reimbursement;

1379 (d) Pursuant to a subpoena, to any federal or state law
 1380 enforcement or prosecutorial instrumentality authorized to
 1381 investigate suspected criminal activity;

1382 (e) As authorized by the board of directors, if in
 1383 corporate form, or the managers, if in limited liability company
 1384 form; or

1385 (f) As provided in subsection (2).

1386 (2) (a) Each customer and stockholder, if a corporation, or
 1387 member, if a limited liability company, has the right to inspect
 1388 the books and records of a family trust company or licensed
 1389 family trust company as they pertain to his or her accounts or
 1390 the determination of his or her voting rights.

1391 (b) The books and records pertaining to customers,
 1392 members, and stockholders of a family trust company or licensed
 1393 family trust company shall be kept confidential by the company
 1394 and its directors, managers, officers, and employees. The books
 1395 and records of customers, members, and stockholders may not be
 1396 released except upon the express authorization of the customer
 1397 as to his or her own accounts or a stockholder or member
 1398 regarding his or her voting rights. However, information may be
 1399 released, without the authorization of a customer, member, or
 1400 shareholder in a manner prescribed by the board of directors, if
 1401 a corporation, or managers, if a limited liability company, to
 1402 verify or corroborate the existence or amount of a customer's
 1403 account if that information is reasonably provided to meet the
 1404 needs of commerce and to ensure accurate credit information.

1405 Notwithstanding this paragraph, this subsection does not
 1406 prohibit a family trust company or licensed family trust company
 1407 from disclosing financial information referenced in this
 1408 subsection as permitted under 15 U.S.C. s. 6802, as amended.

1409 (c) A person who willfully violates a provision of this
 1410 section which relates to unlawful disclosure of confidential
 1411 information commits a felony of the third degree, punishable as
 1412 provided in s. 775.082, s. 775.083, or s. 775.084.

1413 (d) This subsection does not apply to a foreign licensed
 1414 family trust company. The laws of the jurisdiction of its
 1415 principal place of business govern the rights of customers,
 1416 members, and stockholders to inspect its books and records.

1417 (3) For purposes of this section, the term "books and
 1418 records" includes, but is not limited to, an application for a
 1419 license and any documents connected with the application under
 1420 s. 662.121; the office's corresponding investigation under s.
 1421 662.1215 in granting or denying the issuance of the license; the
 1422 initial registration documents of a family trust company or
 1423 foreign licensed family trust company under s. 662.122; the
 1424 annual renewal made by a family trust company, licensed family
 1425 trust company, or foreign licensed family trust company under s.
 1426 662.128; and the documentation submitted to the office in
 1427 connection with a licensed family trust company discontinuing
 1428 its business under s. 662.129.

1429 Section 34. Section 662.147, Florida Statutes, is created
 1430 to read:

1431 662.147 Records relating to the office examination;
 1432 limited restrictions on public access.-
 1433 (1) A family trust company, licensed family trust company,
 1434 and foreign licensed family trust company shall keep at the
 1435 office it is required to maintain pursuant to s. 662.1225 full
 1436 and complete records of the names and residences of all the
 1437 shareholders or members of the trust company and the number of
 1438 shares or membership units held by each, as applicable, as well
 1439 as the ownership percentage of each shareholder or member, as
 1440 the case may be. The records are subject to the inspection of
 1441 all the shareholders or members of the trust company, and the
 1442 officers authorized to assess taxes under state authority,
 1443 during the normal business hours of the trust company. A current
 1444 list of shareholders or members shall be made available to the
 1445 office's examiners for their inspection and, upon the request of
 1446 the office, shall be submitted to the office.
 1447 (2) The office shall retain for at least 10 years:
 1448 (a) Examination reports.
 1449 (b) Investigatory records.
 1450 (c) The application for a license, any documents connected
 1451 with the application, and the office's corresponding
 1452 investigation in granting or denying the issuance of the
 1453 license.
 1454 (d) The initial registration documents of a family trust
 1455 company or foreign licensed family trust company.
 1456 (e) The annual renewal made by a family trust company,

1457 licensed family trust company, or foreign licensed family trust
 1458 company.

1459 (f) The documentation submitted to the office in
 1460 connection with a licensed family trust company discontinuing
 1461 its business and any related information compiled by the office,
 1462 or photographic copies thereof.

1463 (3) A copy of any document on file with the office which
 1464 is certified by the office as being a true copy may be
 1465 introduced in evidence as if it were the original. The office
 1466 shall establish a schedule of fees for preparing true copies of
 1467 documents.

1468 (4) Orders issued by courts or administrative law judges
 1469 for the production of confidential records or information must
 1470 provide for inspection in camera by the court or the
 1471 administrative law judge. If the court or administrative law
 1472 judge determines that the documents requested are relevant or
 1473 would likely lead to the discovery of admissible evidence, the
 1474 documents shall be subject to further orders by the court or the
 1475 administrative law judge to protect the confidentiality thereof.
 1476 An order directing the release of information shall be
 1477 immediately reviewable, and a petition by the office for review
 1478 of the order shall automatically stay any further proceedings in
 1479 the trial court or the administrative hearing until the
 1480 disposition of the petition by the reviewing court. If any other
 1481 party files a petition for review, it will operate as a stay of
 1482 the proceedings only upon order of the reviewing court.

1483 Section 35. Section 662.150, Florida Statutes, is created
 1484 to read:

1485 662.150 Domestication of a foreign family trust company.-

1486 (1) A foreign family trust company lawfully organized and
 1487 currently in good standing with the state regulatory agency in
 1488 the jurisdiction where it is organized may become domesticated
 1489 in this state by:

1490 (a) Filing with the Department of State a certificate of
 1491 domestication and articles of incorporation in accordance with
 1492 and subject to s. 607.1801 or by filing articles of conversion
 1493 in accordance with s. 605.1045; and

1494 (b) Filing an application for a license to begin
 1495 operations as a licensed family trust company in accordance with
 1496 s. 662.121, which must first be approved by the office or by
 1497 filing the prescribed form with the office to register as a
 1498 family trust company to begin operations in accordance with s.
 1499 662.122.

1500 (2) A foreign family trust company may apply pursuant to
 1501 paragraph (1)(b) before satisfying the requirements of paragraph
 1502 (1)(a); however, upon receipt of a certificate of authority, the
 1503 company must satisfy the requirements of paragraph (1)(a) before
 1504 beginning operations.

1505 Section 36. Section 662.151, Florida Statutes, is created
 1506 to read:

1507 662.151 Registration of a foreign licensed family trust
 1508 company to operate in this state.-A foreign licensed family

1509 trust company lawfully organized and currently in good standing
 1510 with the state regulatory agency in the jurisdiction under the
 1511 law of which it is organized may qualify to begin operations in
 1512 this state by:

1513 (1) Filing an application with the Department of State to
 1514 apply for a certificate of authority in accordance with and
 1515 subject to s. 605.0902 or s. 607.1503.

1516 (2) Filing an initial registration to begin operations as
 1517 a foreign licensed family trust company in accordance with and
 1518 subject to s. 662.122 and subject to the sections of this
 1519 chapter which specifically state that they apply to a foreign
 1520 licensed family trust company.

1521 (3) A company in operation as of the effective date of
 1522 this law that meets the definition of a family trust company
 1523 shall have 90 days from the effective date of this act to apply
 1524 for licensure as a licensed family trust company, register as a
 1525 family trust company or foreign licensed family trust company,
 1526 or cease doing business in this state.

1527 Section 37. Paragraph (a) of subsection (3) of section
 1528 120.80, Florida Statutes, is amended to read:

1529 120.80 Exceptions and special requirements; agencies.—

1530 (3) OFFICE OF FINANCIAL REGULATION.—

1531 (a) Notwithstanding s. 120.60(1), in proceedings for the
 1532 issuance, denial, renewal, or amendment of a license or approval
 1533 of a merger pursuant to title XXXVIII:

1534 1.a. The Office of Financial Regulation of the Financial

1535 Services Commission shall have published in the Florida
 1536 Administrative Register notice of the application within 21 days
 1537 after receipt.

1538 b. Within 21 days after publication of notice, any person
 1539 may request a hearing. Failure to request a hearing within 21
 1540 days after notice constitutes a waiver of any right to a
 1541 hearing. The Office of Financial Regulation or an applicant may
 1542 request a hearing at any time prior to the issuance of a final
 1543 order. Hearings shall be conducted pursuant to ss. 120.569 and
 1544 120.57, except that the Financial Services Commission shall by
 1545 rule provide for participation by the general public.

1546 2. Should a hearing be requested as provided by sub-
 1547 subparagraph 1.b., the applicant or licensee shall publish at
 1548 its own cost a notice of the hearing in a newspaper of general
 1549 circulation in the area affected by the application. The
 1550 Financial Services Commission may by rule specify the format and
 1551 size of the notice.

1552 3. Notwithstanding s. 120.60(1), and except as provided in
 1553 subparagraph 4., an every application for license for a new
 1554 bank, new trust company, new credit union, ~~or~~ new savings and
 1555 loan association, or new licensed family trust company must
 1556 ~~shall~~ be approved or denied within 180 days after receipt of the
 1557 original application or receipt of the timely requested
 1558 additional information or correction of errors or omissions. An
 1559 ~~Any~~ application for such a license or for acquisition of such
 1560 control which is not approved or denied within the 180-day

1561 period or within 30 days after conclusion of a public hearing on
 1562 the application, whichever is later, shall be deemed approved
 1563 subject to the satisfactory completion of conditions required by
 1564 statute as a prerequisite to license and approval of insurance
 1565 of accounts for a new bank, a new savings and loan association,
 1566 ~~or~~ a new credit union, or a new licensed family trust company by
 1567 the appropriate insurer.

1568 4. In the case of an every application for license to
 1569 establish a new bank, trust company, or capital stock savings
 1570 association in which a foreign national proposes to own or
 1571 control 10 percent or more of any class of voting securities,
 1572 and in the case of an every application by a foreign national
 1573 for approval to acquire control of a bank, trust company, or
 1574 capital stock savings association, the Office of Financial
 1575 Regulation shall request that a public hearing be conducted
 1576 pursuant to ss. 120.569 and 120.57. Notice of such hearing shall
 1577 be published by the applicant as provided in subparagraph 2. The
 1578 failure of ~~any~~ such foreign national to appear personally at the
 1579 hearing shall be grounds for denial of the application.

1580 Notwithstanding ~~the provisions of~~ s. 120.60(1) and subparagraph
 1581 3., every application involving a foreign national shall be
 1582 approved or denied within 1 year after receipt of the original
 1583 application or any timely requested additional information or
 1584 the correction of any errors or omissions, or within 30 days
 1585 after the conclusion of the public hearing on the application,
 1586 whichever is later.

1587 Section 38. Subsections (2) and (3) of section 736.0802,
 1588 Florida Statutes, are amended, and paragraph (i) is added to
 1589 subsection (5) of that section, to read:

1590 736.0802 Duty of loyalty.—

1591 (2) Subject to the rights of persons dealing with or
 1592 assisting the trustee as provided in s. 736.1016, a sale,
 1593 encumbrance, or other transaction involving the investment or
 1594 management of trust property entered into by the trustee for the
 1595 trustee's own personal account or which is otherwise affected by
 1596 a conflict between the trustee's fiduciary and personal
 1597 interests is voidable by a beneficiary affected by the
 1598 transaction unless:

1599 (a) The transaction was authorized by the terms of the
 1600 trust;

1601 (b) The transaction was approved by the court;

1602 (c) The beneficiary did not commence a judicial proceeding
 1603 within the time allowed by s. 736.1008;

1604 (d) The beneficiary consented to the trustee's conduct,
 1605 ratified the transaction, or released the trustee in compliance
 1606 with s. 736.1012;

1607 (e) The transaction involves a contract entered into or
 1608 claim acquired by the trustee when that person had not become or
 1609 contemplated becoming trustee;

1610 (f) The transaction was consented to in writing by a
 1611 settlor of the trust while the trust was revocable; ~~or~~

1612 (g) The transaction is one by a corporate trustee that

1613 involves a money market mutual fund, mutual fund, or a common
 1614 trust fund described in s. 736.0816(3); or

1615 (h) With regard to a trust that is administered by a
 1616 family trust company, licensed family trust company, or foreign
 1617 licensed family trust company operating under chapter 662, the
 1618 transaction is authorized by s. 662.132(4)-(8).

1619 (3) (a) A sale, encumbrance, or other transaction involving
 1620 the investment or management of trust property is presumed to be
 1621 affected by a conflict between personal and fiduciary interests
 1622 if the sale, encumbrance, or other transaction is entered into
 1623 by the trustee with:

1624 1. ~~(a)~~ The trustee's spouse;

1625 2. ~~(b)~~ The trustee's descendants, siblings, parents, or
 1626 their spouses;

1627 3. ~~(c)~~ An officer, director, employee, agent, or attorney
 1628 of the trustee; or

1629 4. ~~(d)~~ A corporation or other person or enterprise in which
 1630 the trustee, or a person that owns a significant interest in the
 1631 trustee, has an interest that might affect the trustee's best
 1632 judgment.

1633 (b) This subsection does not apply to a trust being
 1634 administered by a family trust company, licensed family trust
 1635 company, or foreign licensed family trust company operating
 1636 under chapter 662 if the sale, encumbrance, or other transaction
 1637 is authorized by s. 662.132(4)-(8).

1638 (5)

1639 | (i) This subsection does not apply to a trust administered
 1640 | by a family trust company, licensed family trust company, or
 1641 | foreign licensed family trust company operating under chapter
 1642 | 662.

1643 | Section 39. Subsection (5) of section 744.351, Florida
 1644 | Statutes, is amended to read:

1645 | 744.351 Bond of guardian.—

1646 | (5) Financial institutions as defined in s. 744.309(4),
 1647 | other than a trust company operating under chapter 662 which is
 1648 | not a licensed family trust company or foreign licensed family
 1649 | trust company, and public guardians authorized by law to be
 1650 | guardians are ~~shall~~ not ~~be~~ required to file bonds.

1651 | Section 40. This act shall take effect October 1, 2014, if
 1652 | HB 1269 or similar legislation is adopted in the same
 1653 | legislative session or an extension thereof and becomes law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1267 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations
2 Appropriations Subcommittee
3 Representative McBurney offered the following:
4

5 **Amendment (with title amendment)**

6 Between lines 1650 and 1651, insert:

7 Section 40. For the 2014-2015 fiscal year, the sum of
8 \$72,069 in recurring funds and \$3,773 in nonrecurring funds from
9 the Financial Institutions' Regulatory Trust Fund are
10 appropriated to the Office of Financial Regulation and 1.00
11 full-time equivalent position and associated salary rate of
12 46,381 are authorized, for the purpose of implementing the
13 regulatory provisions of this act.
14
15
16
17

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1267 (2014)

Amendment No. 1

18
19
20
21
22

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

Remove lines 137-138 and insert:
family trust companies; providing appropriations; providing a
contingent effective date.