



Agriculture & Natural Resources Appropriations Subcommittee

March 5, 2014
1:00 PM – 3:00 PM
Reed Hall



The Florida House of Representatives
Appropriations Committee
Agriculture & Natural Resources Appropriations Subcommittee

Will Weatherford
Speaker

Ben Albritton
Chair

AGENDA
March 5, 2014
1:00 PM—3:00 PM
Reed Hall (102 HOB)

- I. Call to Order/ Roll Call
- II. HB 347 Commercial Parasailing by Clarke-Reed
- III. CS/HB 523 Licensure to Carry a Concealed Weapon or Firearm by Grant
- IV. CS/HB 47 Spiny Lobster by Raschein
- V. CS/HB 185 Gasoline Stations by Danish
- VI. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 347 Commercial Parasailing
SPONSOR(S): Clarke-Reed and others
TIED BILLS: IDEN./SIM. BILLS: SB 320

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|-----------|------------|--|
| 1) Business & Professional Regulation Subcommittee | 12 Y, 0 N | Butler | Luczynski |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | | Massengale | Massengale <i>SM</i> |
| 3) Regulatory Affairs Committee | | | |

SUMMARY ANALYSIS

According to the Florida Fish and Wildlife Conservation Commission (FWC), there have been 21 accidents involving parasailing, resulting in 23 injuries and 6 fatalities in the last 13 years. The primary causes of these accidents include high winds, wind gusts, equipment failure, and operator error.

The bill establishes minimum liability insurance requirements for owners or operators of commercial parasailing, requires each operator to use all available means to determine and record the weather conditions before embarking, and forbids commercial parasailing during severe weather conditions. The bill also requires United States Coast Guard licensure for each operator of a commercial parasailing vessel.

The bill provides for a criminal penalty for violations of the new commercial parasailing provisions.

The bill may have a small fiscal impact on FWC, which should be absorbed by existing resources. The bill is not anticipated to have a fiscal impact on local government. The fiscal impact on the private sector is indeterminate as the bill requires commercial parasailing operators to have liability insurance and certain communications and weather monitoring equipment that they may or may not already have in place.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Parasailing is a recreational activity where one or more persons are towed behind a boat while suspended under a canopy, chute, or parasail above the water. In Florida, commercial parasailing is generally conducted along the Atlantic Ocean and Gulf of Mexico coastlines, with one known exception at Walt Disney World where parasailing takes place on Bay Lake in Orange County.

There are over 200 commercial parasailing operators currently operating in the United States, over half operating in Florida.¹ Approximately 3.8 million people participate in the parasailing industry each year.²

Currently, the Florida Fish and Wildlife Conservation Commission (FWC) is charged with investigating parasailing accidents and cooperates with the United States Coast Guard and local law enforcement investigations. Data compiled by FWC indicates that:³

- From January 1, 2001, through October 30, 2013, 21 accidents involving parasail vessels have occurred in Florida, resulting in 23 injuries and 6 fatalities;
- High winds or sudden wind gusts were a contributing factor in 10 of the 21 accidents;
- Equipment failure due to the wind occurred in 6 of the 10 accidents where wind gusts were a contributing factor;
- Sudden thunderstorms caused many of the wind gusts that contributed to these accidents;
- Several factors, including equipment failure and operator error, were the cause of 11 of the 21 accidents; and,
- Equipment failure was a contributing factor in one fatality in 2012.⁴

The Parasail Safety Council, a trade association of parasailing companies, estimates approximately 73 fatalities and approximately 1,700 other injuries have occurred over the span of 30 years and approximately 130 million parasailing ventures throughout the United States.⁵

In Florida, the most recent incident occurred on July 1, 2013, and resulted in critical injuries to two teenage girls who were parasailing off Panama City Beach.⁶ Weather conditions caused the vessel to lose connection to and control of the parasail, resulting in the parasail drifting out of control toward shore and hitting a building, power line, and several parked cars.⁷

Current Florida Regulations on Parasailing

¹ See Parasail Safety Council Website, <http://www.parasail.org/> (last visited Jan. 15, 2014) (estimating 138 Florida parasailing operators); Parasail Safety Council, *Why are some Parasailing Accidents Fatal?*, <http://www.parasail.org/accident-statistics.html> (last visited Jan. 15, 2014) (estimating over 200 parasailing operators nationwide); see also Florida Fish and Wildlife Conservation Commission, Agency Legislative Analysis for SB 320: Commercial Parasailing (Dec. 4, 2013) (on file with the Business & Professional Regulation Subcommittee) (estimating over 100 parasailing operators in Florida).

² Parasail Safety Council, *Why are some Parasailing Accidents Fatal?*, <http://www.parasail.org/accident-statistics.html> (last visited Jan. 15, 2014).

³ Florida Fish and Wildlife Conservation Commission, Agency Legislative Analysis for SB 320: Commercial Parasailing.

⁴ Rafael Olmeda, *Lawsuit filed in Pompano Beach parasailing death* (June 12, 2013) available at http://articles.sun-sentinel.com/2013-06-12/news/fl-parasailing-death-lawsuit-20130612_1_stephen-miskell-negligence-lawsuit-sands-harbor-resort.

⁵ Parasail Safety Council, *Parasailing Accident Data (1982-2012)*, <http://www.parasail.org/accident-statistics.html> (last visited Jan. 15, 2014).

⁶ United States Coast Guard, UPDATE: Coast Guard investigates parasail accident near the Commodore Condominiums in Panama City Beach (July 18, 2013), available at <http://www.uscgnews.com/go/doc/4007/1855061/UPDATE-Coast-Guard-investigates-parasail-accident-near-the-Commodore-Condominiums-in-Panama-City-Beach> (last visited Jan. 15, 2014).

⁷ Dennis Pillion, *Second girl injured in Panama City Beach parasailing accident released from Indiana hospital*, AL.com, http://blog.al.com/gulf-coast/2013/08/second_girl_injured_in_parasail.html (last visited Jan. 15, 2014).

Florida currently has few substantive regulations of parasailing.

Section 327.37, F.S., regulates parasailing to the degree that it regulates all vessels that tow persons on water skis, parasails, and aquaplanes. The requirements of s. 327.37, F.S., include:

- A person may not operate a vessel towing a person unless there is another person, in addition to the operator, in position to observe the person being towed;⁸
- Parasailing may not be conducted one-half hour before sunrise or one-half hour after sunset;⁹
- United States Coast Guard approved non-inflatable personal flotation devices must be worn by all persons engaged in parasailing;¹⁰ and,
- A person may not operate a vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intercostal Waterway.¹¹

A violation of s. 327.37, F.S., is a noncriminal infraction and provides for a civil penalty of \$50 that may be imposed in county court.

Current Federal Regulations Related to Parasailing

Parasails impact the National Airspace System and meet the legal definition of any “kite” that weighs more than five pounds and is intended to be flown at the end of a rope or cable.¹² Consequently, the Federal Aviation Administration (FAA) regulates parasailing to maintain a safe atmosphere for the flying public.¹³

Specifically, the FAA regulation on “kites” states:

Except as provided . . . no person may operate a moored balloon or kite:

- (1) Less than 500 feet from the base of any cloud;
- (2) More than 500 feet above the surface of the earth;
- (3) From an area where the ground visibility is less than three miles; or
- (4) Within five miles of the boundary of any airport.¹⁴

Further, each parasail must have colored pennants or streamers every 50 feet that are visible for one mile, starting at 150 feet above the earth’s surface.¹⁵ Operating at night is disallowed under the FAA regulations unless the entire mooring line is lit to give visual warning for air navigation; however, night operation is prohibited by Florida regulation except during the half hour directly after sunset and the half hour directly before sunrise.¹⁶

Effect of the Bill

The act may be cited as the “White-Miskell Act.” The act is named for two women who died from parasailing accidents in Pompano Beach. Amber White, 15, died in 2007 after windy conditions caused the line connecting the parasail she and her sister were riding to break free of its vessel and they collided with a hotel roof. Kathleen Miskell, 28, died in 2012 after a harness malfunction caused her to drop 200 feet into the water where she drowned.

The bill defines “commercial parasailing” as:

⁸ Section 327.37(1)(b), F.S.

⁹ Section 327.37(2)(a), F.S.

¹⁰ Section 327.37(2)(b), F.S.

¹¹ Section 327.37(5), F.S.

¹² 14 C.F.R. §101.1 (2013).

¹³ Federal Aviation Administration, *Parasail Operations Regulated by the FAA*, Air Traffic Bulletin 2012-2, (April 2012), http://www.faa.gov/air_traffic/publications/media/ATB2012-2.pdf (last visited Jan. 23, 2014).

¹⁴ 14 C.F.R. §101.13 (2013).

¹⁵ 14 C.F.R. §101.17 (2013).

¹⁶ 14 C.F.R. §101.17 (2013); see also Section 327.37(2)(a), F.S.

[P]roviding or offering to provide, for consideration, any activity involving the towing of a person by a motorboat if:

- (a) One or more persons are tethered to the towing vessel;
- (b) The person or persons ascend above the water; and
- (c) The person or persons remain suspended under a canopy, chute, or parasail above the water while the vessel is underway.

The bill specifically excludes ultralight glider towing as defined in 14 C.F.R. § 103 in its definition of commercial parasailing.

The bill defines "sustained wind speed" as:

[W]ind speed determined by averaging the observed wind speed rounded up to the nearest mile per hour over a 2-minute period.

Insurance Requirements

The bill requires that an owner or operator cannot engage in commercial parasailing unless the owner or operator first obtains and maintains liability insurance providing bodily liability coverage from an insurance carrier licensed in Florida, or approved by the Florida Office of Insurance Regulation, or an eligible surplus lines insurer. This liability insurance must provide bodily injury coverage amounts of at least \$1 million per occurrence and \$2 million annual aggregate.

Proof of insurance in compliance with the mandates for this bill must be available for inspection at the location where commercial parasailing is offered or provided for consideration. This proof of insurance must be available for each customer and FWC to inspect upon request.

Equipment Requirements

The bill requires that a commercial parasailing vessel must have both a functional VHF marine transceiver and a separate device capable of accessing the National Weather Service forecasts and current weather conditions.

The bill requires that the operator of a commercial parasailing vessel maintain a weather log. The operator must record all prevailing and forecasted weather conditions, and must use all available means to determine these conditions. The log must be used each time passengers are to be taken out on the water. The weather log must be available for inspection at all times at the operator's place of business.

Operational Requirements

The bill includes the following operational requirements:

- A current and valid license issued by the United States Coast Guard to the person operating the parasailing vessel which is appropriate for the number of passengers and the size of the vessel.
- Commercial parasailing is prohibited when the weather conditions include:
 - Sustained wind speeds over 20 mph;
 - Wind gusts 15 mph higher than sustained wind speeds;
 - Wind speeds during gusts exceed 25 mph;
 - Rain or heavy fog results in visibility of less than 0.5 miles; or
 - A known lightning storm comes within 7 miles of the parasailing area.

Penalties

The bill provides that a violation of the commercial parasailing provisions in the bill is a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Misdemeanors of the

second degree are punishable by up to 60 days in jail and/or a fine of up to \$500, at the discretion of the Court.¹⁷

According to industry representatives, it is standard practice to have parasailing participants sign an assumption of risk, release of liability and indemnification agreement (waiver). Florida courts generally enforce such waiver agreements when they are unambiguous; however, Florida courts have held that such waivers may not serve as a release of liability in cases of *negligence per se*, that is, when the injury arises from a violation of a statute designed to protect the well-being of the person signing the waiver.¹⁸

Thus, injuries sustained due to violation by a person or operator of those statutory provisions in the bill designed to safeguard participants potentially could result in liability even where the participant signed a waiver agreement.

B. SECTION DIRECTORY:

Section 1 provides that the title for the act is the "White-Miskall Act."

Section 2 amends s. 327.02, F.S., to define "Commercial parasailing" and "sustained wind speed."

Section 3 creates s. 327.375, F.S., relating to parasailing; provides an insurance mandate for the owner or operator of a commercial parasailing operation; requires a current and valid United States Coast Guard license for an operator; requires a VHF marine transceiver and weather radio; prohibits parasailing in certain wind conditions; requires maintenance of a weather log by the operator; and, provides for criminal penalties for noncompliance.

Sections 4 to 9 amends ss. 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07 to conform and correct statutory cross-references.

Section 10 provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Florida Fish and Wildlife Conservation Commission staff, they anticipate using existing resources to implement the requirements of this bill.¹⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁷ Sections 775.082, and 775.083, F.S.

¹⁸ See generally *deJesus v. Seaboard Coast Line R. Co.*, 281 So. 2d 198, 201 (Fla. 1973) (stating "negligence per se is a violation of any other statute which establishes a duty to take precautions to protect a particular class of persons from a particular injury or type of injury"); *Torres v. Offshore Prof'l Tour, Inc.*, 629 So. 2d 192, 194 (Fla. 3rd DCA 1993) (stating "[t]he enforcement of a release or waiver immunizing a [party] from liability for breach of a positive statutory duty designed to protect the well-being of the person executing the release, . . . would be contrary to public policy") [internal citations omitted].

¹⁹ Florida Fish and Wildlife Conservation Commission, Agency Legislative Analysis for SB 320: Commercial Parasailing.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact on the private sector is indeterminate as the bill requires commercial parasailing operators to have liability insurance and certain communications and weather monitoring equipment that they may or may not already have in place. According to sources within the insurance and parasailing industries, the proposed insurance and operational requirements are equivalent to what they currently hold and should have no fiscal impact. Parasailing operators who do not hold insurance or do not currently have the required equipment will be required to obtain the necessary coverage and acquire the necessary equipment.²⁰

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²⁰ *Id.*

1 A bill to be entitled
 2 An act relating to commercial parasailing; providing a
 3 short title; amending s. 327.02, F.S.; defining terms;
 4 creating s. 327.375, F.S.; requiring the operator of a
 5 vessel engaged in commercial parasailing to ensure
 6 that specified requirements are met; requiring the
 7 owner of a vessel engaged in commercial parasailing to
 8 obtain and maintain an insurance policy; providing
 9 minimum coverage requirements for the insurance
 10 policy; providing requirements for proof of insurance;
 11 specifying the insurance information that must be
 12 provided upon request; requiring the operator to have
 13 a current and valid license issued by the United
 14 States Coast Guard; prohibiting commercial parasailing
 15 unless certain equipment is present on the vessel and
 16 certain weather conditions are met; requiring that a
 17 weather log be maintained and made available for
 18 inspection; providing a criminal penalty; amending ss.
 19 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07,
 20 F.S.; conforming cross-references; providing an
 21 effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. This act may be cited as the "White-Miskell
 26 Act."

27 Section 2. Section 327.02, Florida Statutes, is amended to
 28 read:

29 327.02 Definitions.—As used in this chapter and in chapter
 30 328, unless the context clearly requires a different meaning,
 31 the term:

32 (1) "Airboat" means a vessel that is primarily designed
 33 for use in shallow waters and powered by an internal combustion
 34 engine with an airplane-type propeller mounted above the stern
 35 and used to push air across a set of rudders.

36 (2) "Alien" means a person who is not a citizen of the
 37 United States.

38 (3) "Boating accident" means a collision, accident, or
 39 casualty involving a vessel in or upon, or entering into or
 40 exiting from, the water, including capsizing, collision with
 41 another vessel or object, sinking, personal injury, death,
 42 disappearance of a ~~any~~ person from on board under circumstances
 43 that ~~which~~ indicate the possibility of death or injury, or
 44 property damage to any vessel or dock.

45 (4) "Canoe" means a light, narrow vessel with curved sides
 46 and with both ends pointed. A canoe-like vessel with a transom
 47 may not be excluded from the definition of a canoe if the width
 48 of its transom is less than 45 percent of the width of its beam
 49 or it has been designated as a canoe by the United States Coast
 50 Guard.

51 (5) "Commercial parasailing" means providing or offering
 52 to provide, for consideration, any activity involving the towing

53 of a person by a motorboat if:

54 (a) One or more persons are tethered to the towing vessel;

55 (b) The person or persons ascend above the water; and

56 (c) The person or persons remain suspended under a canopy,
 57 chute, or parasail above the water while the vessel is underway.

58

59 The term does not include ultralight glider towing conducted
 60 under rules of the Federal Aviation Administration governing
 61 ultralight vehicles as defined in 14 C.F.R. part 103.

62 (6)-(5) "Commercial vessel" means:

63 (a) A ~~Any~~ vessel primarily engaged in the taking or
 64 landing of saltwater fish or saltwater products or freshwater
 65 fish or freshwater products, or a ~~any~~ vessel licensed pursuant
 66 to s. 379.361 from which commercial quantities of saltwater
 67 products are harvested, from within and without the waters of
 68 this state for sale ~~either~~ to the consumer or to a retail
 69 ~~dealer,~~ or wholesale dealer.

70 (b) Any other vessel, except a recreational vessel as
 71 defined in this section.

72 (7)-(6) "Commission" means the Fish and Wildlife
 73 Conservation Commission.

74 (8)-(7) "Dealer" means a ~~any~~ person authorized by the
 75 Department of Revenue to buy, sell, resell, or otherwise
 76 distribute vessels. Such person must ~~shall~~ have a valid sales
 77 tax certificate of registration issued by the Department of
 78 Revenue and a valid commercial or occupational license required

79 | by any county, municipality, or political subdivision of the
 80 | state in which the person operates.

81 | (9)~~(8)~~ "Division" means the Division of Law Enforcement of
 82 | the Fish and Wildlife Conservation Commission.

83 | (10)~~(9)~~ "Documented vessel" means a vessel for which a
 84 | valid certificate of documentation is outstanding pursuant to 46
 85 | C.F.R. part 67.

86 | (11)~~(10)~~ "Floating structure" means a floating entity,
 87 | with or without accommodations built thereon, which is not
 88 | primarily used as a means of transportation on water but which
 89 | serves purposes or provides services typically associated with a
 90 | structure or other improvement to real property. The term
 91 | ~~"floating structure"~~ includes, but is not limited to, an ~~each~~
 92 | entity used as a residence, place of business or office with
 93 | public access; a~~7~~ hotel or motel; a~~7~~ restaurant or lounge; a~~7~~
 94 | clubhouse; a~~7~~ meeting facility; a~~7~~ storage or parking facility;
 95 | or a~~7~~ mining platform, dredge, dragline, or similar facility or
 96 | entity represented as such. Floating structures are expressly
 97 | excluded from the definition of the term "vessel" provided in
 98 | this section. Incidental movement upon water or resting
 99 | partially or entirely on the bottom does ~~shall~~ not, in and of
 100 | itself, preclude an entity from classification as a floating
 101 | structure.

102 | (12)~~(11)~~ "Florida Intracoastal Waterway" means the
 103 | Atlantic Intracoastal Waterway, the Georgia state line north of
 104 | Fernandina to Miami; the Port Canaveral lock and canal to the

105 Atlantic Intracoastal Waterway; the Atlantic Intracoastal
 106 Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to
 107 Fort Myers; the St. Johns River, Jacksonville to Sanford; the
 108 Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf
 109 Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to
 110 Anclote open bay section, using the Gulf of Mexico; the Gulf
 111 Intracoastal Waterway, Carrabelle to the Alabama state line west
 112 of Pensacola; and the Apalachicola, Chattahoochee, and Flint
 113 Rivers in Florida.

114 (13)~~(12)~~ "Homemade vessel" means a ~~any~~ vessel built after
 115 October 31, 1972, for which a federal hull identification number
 116 is not required to be assigned by the manufacturer pursuant to
 117 federal law, or a ~~any~~ vessel constructed or assembled before
 118 ~~prior to~~ November 1, 1972, by an entity other than a licensed
 119 manufacturer for its ~~his or her~~ own use or the use of a specific
 120 person. A vessel assembled from a manufacturer's kit or
 121 constructed from an unfinished manufactured hull is ~~shall be~~
 122 considered to be a homemade vessel if such a vessel is not
 123 required to have a hull identification number assigned by the
 124 United States Coast Guard. A rebuilt or reconstructed vessel may
 125 not ~~shall in no event~~ be construed to be a homemade vessel.

126 (14)~~(13)~~ "Houseboat" means a any vessel that ~~which~~ is used
 127 primarily as a residence for at least ~~a minimum of~~ 21 days
 128 during any 30-day period, in a county of this state if such, ~~and~~
 129 ~~this~~ residential use of the vessel is to the preclusion of its
 130 ~~the use of the vessel~~ as a means of transportation.

131 ~~(15)~~~~(14)~~ "Length" means the measurement from end to end
 132 over the deck parallel to the centerline, excluding sheer.

133 ~~(16)~~~~(15)~~ "Lien" means a security interest that ~~which~~ is
 134 reserved or created by a written agreement recorded with the
 135 Department of Highway Safety and Motor Vehicles pursuant to s.
 136 328.15 and that ~~which~~ secures payment or performance of an
 137 obligation and is generally valid against third parties.

138 ~~(17)~~~~(16)~~ "Lienholder" means a person holding a security
 139 interest in a vessel, which interest is recorded with the
 140 Department of Highway Safety and Motor Vehicles pursuant to s.
 141 328.15.

142 ~~(18)~~~~(17)~~ "Live-aboard vessel" means:

143 (a) A ~~Any~~ vessel used solely as a residence and not for
 144 navigation;

145 (b) A ~~Any~~ vessel represented as a place of business or a
 146 professional or other commercial enterprise; or

147 (c) A ~~Any~~ vessel for which a declaration of domicile has
 148 been filed pursuant to s. 222.17.

149
 150 A commercial fishing boat is expressly excluded from the term
 151 "live-aboard vessel."

152 ~~(19)~~~~(18)~~ "Livery vessel" means a ~~any~~ vessel leased,
 153 rented, or chartered to another for consideration.

154 ~~(20)~~~~(19)~~ "Manufactured vessel" means a ~~any~~ vessel built
 155 after October 31, 1972, for which a federal hull identification
 156 number is required pursuant to federal law, or a ~~any~~ vessel

157 | constructed or assembled before ~~prior to~~ November 1, 1972, by a
 158 | duly licensed manufacturer.

159 | (21)~~(20)~~ "Marina" means a licensed commercial facility
 160 | that ~~which~~ provides secured public moorings or dry storage for
 161 | vessels on a leased basis. A commercial establishment authorized
 162 | by a licensed vessel manufacturer as a dealership is ~~shall be~~
 163 | considered a marina for nonjudicial sale purposes.

164 | (22)~~(21)~~ "Marine sanitation device" means ~~any~~ equipment,
 165 | other than a toilet, for installation on board a vessel, ~~which~~
 166 | is designed to receive, retain, treat, or discharge sewage, and
 167 | any process to treat such sewage. Marine sanitation device Types
 168 | I, II, and III shall be defined as provided in 33 C.F.R. part
 169 | 159.

170 | (23)~~(22)~~ "Marker" means a ~~any~~ channel mark or other aid to
 171 | navigation, an information or regulatory mark, an isolated
 172 | danger mark, a safe water mark, a special mark, an inland waters
 173 | obstruction mark, or mooring buoy in, on, or over the waters of
 174 | the state or the shores thereof, and includes, but is not
 175 | limited to, a sign, beacon, buoy, or light.

176 | (24)~~(23)~~ "Motorboat" means a ~~any~~ vessel equipped with
 177 | machinery for propulsion, irrespective of whether the propulsion
 178 | machinery is in actual operation.

179 | (25)~~(24)~~ "Muffler" means an automotive-style sound-
 180 | suppression device or system designed to effectively abate the
 181 | sound of exhaust gases emitted from an internal combustion
 182 | engine and prevent excessive sound when installed on such an

183 engine.

184 (26)~~(25)~~ "Navigation rules" means, for vessels on:

185 (a) ~~For vessels on~~ Waters outside ~~of~~ established
 186 navigational lines of demarcation as specified in 33 C.F.R. part
 187 80, the International Navigational Rules Act of 1977, 33 U.S.C.
 188 s. 1602, as amended, including the appendix and annexes thereto,
 189 through October 1, 2012.

190 (b) ~~For vessels on~~ All waters not outside of such
 191 established lines of demarcation, the Inland Navigational Rules
 192 Act of 1980, 33 C.F.R. parts 83-90, as amended, through October
 193 1, 2012.

194 (27)~~(26)~~ "Nonresident" means a citizen of the United
 195 States who has not established residence in this state and has
 196 not continuously resided in this state for 1 year and in one
 197 county for the 6 months immediately preceding the initiation of
 198 a vessel titling or registration action.

199 (28)~~(27)~~ "Operate" means to be in charge of, ~~or~~ in command
 200 of, ~~or~~ in actual physical control of a vessel upon the waters of
 201 this state, ~~or~~ to exercise control over or to have
 202 responsibility for a vessel's navigation or safety while the
 203 vessel is underway upon the waters of this state, or to control
 204 or steer a vessel being towed by another vessel upon the waters
 205 of the state.

206 (29)~~(28)~~ "Owner" means a person, other than a lienholder,
 207 having the property in or title to a vessel. The term includes a
 208 person entitled to the use or possession of a vessel subject to

209 an interest in another person which is~~7~~ reserved or created by
 210 agreement and securing payment of performance of an obligation.~~7~~
 211 ~~but~~ The term does not include ~~excludes~~ a lessee under a lease
 212 not intended as security.

213 (30)~~(29)~~ "Person" means an individual, partnership, firm,
 214 corporation, association, or other entity.

215 (31)~~(30)~~ "Personal watercraft" means a vessel less than 16
 216 feet in length which uses an inboard motor powering a water jet
 217 pump~~7~~ as its primary source of motive power and which is
 218 designed to be operated by a person sitting, standing, or
 219 kneeling on the vessel, rather than in the conventional manner
 220 of sitting or standing inside the vessel.

221 (32)~~(31)~~ "Portable toilet" means a device consisting of a
 222 lid, seat, containment vessel, and support structure which ~~that~~
 223 is specifically designed to receive, retain, and discharge human
 224 waste and which ~~that~~ is capable of being removed from a vessel
 225 by hand.

226 (33)~~(32)~~ "Prohibited activity" means ~~such~~ activity that ~~as~~
 227 will impede or disturb navigation or creates a safety hazard on
 228 waterways of this state.

229 (34)~~(33)~~ "Racing shell," "rowing scull," or "racing kayak"
 230 means a manually propelled vessel that ~~which~~ is recognized by
 231 national or international racing associations for use in
 232 competitive racing and in which all occupants, with the
 233 exception of a coxswain, if one is provided, row, scull, or
 234 paddle and that ~~which~~ is not designed to carry and does not

235 carry any equipment not solely for competitive racing.

236 (35)~~(34)~~ "Recreational vessel" means a ~~any~~ vessel:

237 (a) Manufactured and used primarily for noncommercial
238 purposes; or

239 (b) Leased, rented, or chartered to a person for his or
240 her ~~the person's~~ noncommercial use.

241 (36)~~(35)~~ "Registration" means a state operating license on
242 a vessel which is issued with an identifying number, an annual
243 certificate of registration, and a decal designating the year
244 for which a registration fee is paid.

245 (37)~~(36)~~ "Resident" means a citizen of the United States
246 who has established residence in this state and has continuously
247 resided in this state for 1 year and in one county for the 6
248 months immediately preceding the initiation of a vessel titling
249 or registration action.

250 (38)~~(37)~~ "Sailboat" means a ~~any~~ vessel whose sole source
251 of propulsion is the wind.

252 (39) "Sustained wind speed" means a wind speed determined
253 by averaging the observed wind speed rounded up to the nearest
254 mile per hour over a 2-minute period.

255 (40)~~(38)~~ "Unclaimed vessel" means an ~~any~~ undocumented
256 vessel, including its machinery, rigging, and accessories, which
257 is in the physical possession of a ~~any~~ marina, garage, or repair
258 shop for repairs, improvements, or other work with the knowledge
259 of the vessel owner and for which the costs of such services
260 have been unpaid for more than ~~a period in excess of~~ 90 days

261 after ~~from~~ the date written notice of the completed work is
 262 given by the marina, garage, or repair shop to the vessel owner.

263 ~~(41)-(39)~~ "Vessel" is synonymous with boat as referenced in
 264 s. 1(b), Art. VII of the State Constitution and includes every
 265 description of watercraft, barge, and airboat, other than a
 266 seaplane on the water, used or capable of being used as a means
 267 of transportation on water.

268 ~~(42)-(40)~~ "Waters of this state" means any navigable waters
 269 of the United States within the territorial limits of this
 270 state, ~~and~~ the marginal sea adjacent to this state and the high
 271 seas when navigated as a part of a journey or ride to or from
 272 the shore of this state, and all the inland lakes, rivers, and
 273 canals under the jurisdiction of this state.

274 Section 3. Section 327.375, Florida Statutes, is created
 275 to read:

276 327.375 Commercial parasailing.-

277 (1) The operator of a vessel engaged in commercial
 278 parasailing shall ensure that the provisions of this section and
 279 s. 327.37 are met.

280 (2) The owner or operator of a vessel engaged in
 281 commercial parasailing may not offer or provide for
 282 consideration any parasailing activity unless the owner or
 283 operator first obtains and maintains in full force and effect a
 284 liability insurance policy from an insurance carrier licensed in
 285 this state or approved by the Office of Insurance Regulation or
 286 an eligible surplus lines insurer. Such policy must provide

287 bodily injury liability coverage in the amounts of at least \$1
 288 million per occurrence and \$2 million annual aggregate. Proof of
 289 insurance must be available for inspection at the location where
 290 commercial parasailing is offered or provided for consideration,
 291 and each customer who requests such proof shall be provided with
 292 the insurance carrier's name and address and the insurance
 293 policy number.

294 (3) The operator of a vessel engaged in commercial
 295 parasailing must have a current and valid license issued by the
 296 United States Coast Guard authorizing the operator to carry
 297 passengers for hire. The license must be appropriate for the
 298 number of passengers carried and the displacement of the vessel.
 299 The license must be carried on the vessel and be available for
 300 inspection while engaging in commercial parasailing activities.

301 (4) A vessel engaged in commercial parasailing must be
 302 equipped with a functional VHF marine transceiver and a separate
 303 electronic device capable of providing access to National
 304 Weather Service forecasts and current weather conditions.

305 (5) (a) Commercial parasailing is prohibited if the current
 306 observed wind conditions in the area of operation include a
 307 sustained wind speed of more than 20 miles per hour; if wind
 308 gusts are 15 miles per hour higher than the sustained wind
 309 speed; if the wind speed during gusts exceeds 25 miles per hour;
 310 if rain or heavy fog results in reduced visibility of less than
 311 0.5 mile; or if a known lightning storm comes within 7 miles of
 312 the parasailing area.

313 (b) The operator of the vessel engaged in commercial
 314 parasailing shall use all available means to determine
 315 prevailing and forecasted weather conditions and record this
 316 information in a weather log each time passengers are to be
 317 taken out on the water. The weather log must be available for
 318 inspection at all times at the operator's place of business.

319 (6) A person or operator who violates this section commits
 320 a misdemeanor of the second degree, punishable as provided in s.
 321 775.082 or s. 775.083.

322 Section 4. Paragraph (d) of subsection (5) of section
 323 320.08, Florida Statutes, is amended to read:

324 320.08 License taxes.—Except as otherwise provided herein,
 325 there are hereby levied and imposed annual license taxes for the
 326 operation of motor vehicles, mopeds, motorized bicycles as
 327 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,
 328 and mobile homes, as defined in s. 320.01, which shall be paid
 329 to and collected by the department or its agent upon the
 330 registration or renewal of registration of the following:

331 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
 332 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

333 (d) A wrecker, as defined in s. 320.01, which is used to
 334 tow a vessel as defined in s. 327.02~~(39)~~, a disabled, abandoned,
 335 stolen-recovered, or impounded motor vehicle as defined in s.
 336 320.01, or a replacement motor vehicle as defined in s. 320.01:
 337 \$41 flat, of which \$11 shall be deposited into the General
 338 Revenue Fund.

339 Section 5. Subsection (1) of section 327.391, Florida
 340 Statutes, is amended to read:

341 327.391 Airboats regulated.—

342 (1) The exhaust of every internal combustion engine used
 343 on any airboat operated on the waters of this state shall be
 344 provided with an automotive-style factory muffler, underwater
 345 exhaust, or other manufactured device capable of adequately
 346 muffling the sound of the exhaust of the engine as described in
 347 s. 327.02(25) ~~s. 327.02(24)~~. The use of cutouts or flex pipe as
 348 the sole source of muffling is prohibited, except as provided in
 349 subsection (4). Any person who violates this subsection commits
 350 a noncriminal infraction punishable as provided in s. 327.73(1).

351 Section 6. Subsection (4) of section 328.17, Florida
 352 Statutes, is amended to read:

353 328.17 Nonjudicial sale of vessels.—

354 (4) A marina, as defined in s. 327.02~~(20)~~, shall have:

355 (a) A possessory lien upon any vessel for storage fees,
 356 dockage fees, repairs, improvements, or other work-related
 357 storage charges, and for expenses necessary for preservation of
 358 the vessel or expenses reasonably incurred in the sale or other
 359 disposition of the vessel. The possessory lien attaches ~~shall~~
 360 ~~attach~~ as of the date the vessel is brought to the marina or as
 361 of the date the vessel first occupies rental space at the marina
 362 facility.

363 (b) A possessory lien upon any vessel in a wrecked,
 364 junked, or substantially dismantled condition, which has been

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365 left abandoned at a marina, for expenses reasonably incurred in
 366 the removal and disposal of the vessel. The possessory lien
 367 attaches ~~shall attach~~ as of the date the vessel arrives at the
 368 marina or as of the date the vessel first occupies rental space
 369 at the marina facility. If the funds recovered from the sale of
 370 ~~the vessel,~~ or from the scrap or salvage value of the vessel,
 371 are insufficient to cover the expenses reasonably incurred by
 372 the marina in removing and disposing of the vessel, all costs in
 373 excess of recovery shall be recoverable against the owner of the
 374 vessel. For a vessel damaged as a result of a named storm, the
 375 provisions of this paragraph shall be suspended for 60 days
 376 after ~~following~~ the date the vessel is damaged in the named
 377 storm. The operation of the provisions specified in this
 378 paragraph run concurrently with, and do not extend, the 60-day
 379 notice periods provided in subsections (5) and (7).

380 Section 7. Subsection (2) of section 342.07, Florida
 381 Statutes, is amended to read:

382 342.07 Recreational and commercial working waterfronts;
 383 legislative findings; definitions.—

384 (2) As used in this section, the term "recreational and
 385 commercial working waterfront" means a parcel or parcels of real
 386 property which ~~that~~ provide access for water-dependent
 387 commercial activities, including hotels and motels as defined in
 388 s. 509.242(1), or provide access for the public to the navigable
 389 waters of the state. Recreational and commercial working
 390 waterfronts require direct access to or a location on, over, or

391 adjacent to a navigable body of water. The term includes water-
 392 dependent facilities that are open to the public and offer
 393 public access by vessels to the waters of the state or that are
 394 support facilities for recreational, commercial, research, or
 395 governmental vessels. These facilities include public lodging
 396 establishments, docks, wharfs, lifts, wet and dry marinas, boat
 397 ramps, boat hauling and repair facilities, commercial fishing
 398 facilities, boat construction facilities, and other support
 399 structures over the water. As used in this section, the term
 400 "vessel" has the same meaning as in s. 327.02~~(39)~~. Seaports are
 401 excluded from the definition.

402 Section 8. Paragraph (b) of subsection (1) of section
 403 713.78, Florida Statutes, is amended to read:

404 713.78 Liens for recovering, towing, or storing vehicles
 405 and vessels.—

406 (1) For the purposes of this section, the term:

407 (b) "Vessel" means every description of watercraft, barge,
 408 and airboat used or capable of being used as a means of
 409 transportation on water, other than a seaplane or a "documented
 410 vessel" as defined in s. 327.02~~(9)~~.

411 Section 9. Paragraph (b) of subsection (1) of section
 412 715.07, Florida Statutes, is amended to read:

413 715.07 Vehicles or vessels parked on private property;
 414 towing.—

415 (1) As used in this section, the term:

416 (b) "Vessel" means every description of watercraft, barge,

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

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417 | and airboat used or capable of being used as a means of
418 | transportation on water, other than a seaplane or a "documented
419 | vessel" as defined in s. 327.02~~(9)~~.

420 | Section 10. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 523 Licensure to Carry a Concealed Weapon or Firearm
SPONSOR(S): Business & Professional Regulation Subcommittee; Grant and others
TIED BILLS: CS/HB 525 **IDEN./SIM. BILLS:** CS/SB 544

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|--|--|
| 1) Business & Professional Regulation Subcommittee | 10 Y, 2 N, As CS | Brown-Blake | Luczynski |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | | Lolley  | Massengale  |
| 3) Regulatory Affairs Committee | | | |

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services is responsible for issuing licenses to carry concealed weapons or concealed firearms to those who qualify.¹ Carrying concealed weapons or firearms without first obtaining a license is a crime, with some exceptions, under s. 790.01, F.S. Currently, applicants for licensure to carry concealed weapons or firearms may apply in person at one of the department's eight regional offices or submit an application by mail.

The bill authorizes the department to appoint tax collectors for the purpose of accepting applications for concealed weapons or firearms licenses or renewals. To be considered by the department, tax collectors must submit a request to the department to accept applications for concealed weapons or firearms licenses. Upon approval of the tax collector's qualifications by the department, the Division of Licensing has the discretion to enter into a Memorandum of Understanding (MOU) with the tax collector.

Under this MOU, tax collectors will be able to accept application and payment for licensure to carry concealed weapons or firearms, and remit the payment and application to the department for processing. The bill provides that the tax collector may obtain a convenience fee of \$22 for each new application and \$12 for each renewal application. It remains the department's responsibility to process the applications and issue concealed weapons and firearms licenses to qualified applicants.

All personal identifying information provided for the license or renewal that is contained in a tax collector's records as a result of the MOU is given confidential and exempt status by the linked bill—CS/HB 525.

The bill makes no changes to eligibility criteria or license application requirements.

The bill provides an appropriation to the Department of Agriculture and Consumer Services of 11 positions and the recurring sum of \$707,608 and the nonrecurring sum of \$105,503 from the Division of Licensing Trust Fund to implement the provisions of the act (see Fiscal Analysis and Economic Impact Statement section for more detail).

Because the number of applications received by the tax collectors' offices is unknown, it cannot be determined if the \$22 or \$12 convenience fees are sufficient or exceed the amount needed to support the tax collectors' operating costs.

If applicants choose to apply at a tax collector's office rather than at the department, they will pay \$123.50 rather than \$112 for new licenses and \$72 rather than \$60 for renewal licenses. Local private companies that provide firearms safety and training courses may experience an increase in revenue if the convenience of applying at the tax collectors' offices increases the number of applications.

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

¹ Section 790.06(1), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Issuance of Concealed Weapons or Firearms Licenses

The Department of Agriculture and Consumer Services is responsible for issuing licenses to carry concealed weapons or concealed firearms to those who qualify.² Carrying a concealed weapon without first obtaining a license is a crime, with some exceptions, under s. 790.01, F.S. A concealed weapon or concealed firearm is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billy.³

Concealed Weapons or Firearms License Application Requirements

To obtain a concealed weapons or firearms license, applicants must make application and meet the following general requirements:

- Is a citizen or permanent resident alien of the United States; or is a consular security official of a foreign government with diplomatic relations with the United States.
- Is at least 21 years old.
- Can physically handle a weapon safely.
- Is not a convicted felon.
- Has not been convicted of a crime under ch. 893, F.S., or been committed for the abuse of a controlled substance within a 3-year period immediately preceding the application date.
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired.
- Demonstrates competence with a firearm by completing a firearm training course or presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service; or is or has previously been licensed to carry a firearm in Florida.
- Has not been adjudicated an incapacitated person under s. 744.331, F.S.
- Has not been committed to a mental institution under ch. 394, F.S.
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled.
- Is not currently under a domestic violence injunction.
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.⁴

To obtain a concealed weapons or firearms license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant.
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days.
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions.

² Section 790.06(1), F.S.

³ *Id.*

⁴ Section 790.06(2), F.S.

- A warning that the application is executed under oath with penalties for falsifying or substituting false documents.
- A statement that the applicant desires concealed weapons or firearms license as a means of lawful self-defense.
- A full set of fingerprints.
- Documented proof of completion of a firearms safety and training course.
- A nonrefundable license fee no greater than \$70 for a new license or no greater than \$60 for a renewal.⁵

There is an additional \$42 fee for processing the fingerprints, which comprises \$16.50 for the FBI national background check, \$15 for the FDLE Florida background check, and \$10.50 for the department to cover LiveScan electronic fingerprint scanner machine maintenance and personnel.⁶ In addition, sheriff's offices are statutorily authorized to collect \$5 for fingerprinting services.⁷

Section 790.06(6)(c), F.S., requires the department to either issue the license or deny its issuance and notify the applicant within 90 days of receiving a completed application. The most common reasons for delay and the department's response to those issues are as follows:

- An incomplete application. The department will notify the applicant by letter of any deficiencies and request the missing information or documentation.
- The fingerprints are insufficiently legible to complete a proper background check. The department will request a second fingerprint submission as required by law. If the second fingerprint submission is also deemed illegible, the department can then ask the FBI to conduct a name-based background check.
- The background check results reflect a potentially disqualifying crime without a final disposition. The department will request court documents indicating the final disposition.⁸

To prevent some of these issues, the department has made a "Fast Track Processing" system available to applicants in eight regional offices. During an appointment, the applicant can fill out and submit the application, have their fingerprints scanned electronically, have their picture taken and make their payment. Staff reviews the application for completeness at the regional office before it is submitted to the department's Division of Licensing for final processing.

Renewal of concealed weapons or firearms licenses requires less documentation and can be completed much faster either via a regional office or by mail. If a renewal is done in one of the eight regional offices, with few exceptions, the limited processing work can be done onsite and the renewal license is issued to the waiting applicant.

Concealed weapons or firearms license application submissions have steadily increased over the last 14 years. During Fiscal Year 1999-2000, the department received 28,618 applications for initial licensure and 73,821 applications for licensure renewal.⁹ During Fiscal Year 2012-2013, the department received 204,288 new license applications and 60,293 applications for license renewal.¹⁰ During the same time period, the department issued 192,026 new concealed weapons or firearms

⁵ Section 790.06(4)-(5), F.S.

⁶ Email from Grace Lovett, Office of Legislative Affairs, Department of Agriculture and Consumer Services, RE: Website from FDLE, regarding fingerprint fee collected with carrying concealed weapons and firearms applications, February 12, 2014 (on file with the Business & Professional Regulation Subcommittee).

⁷ Section 790.06(6)(b), F.S.

⁸ Florida Department of Agriculture and Consumer Services, Frequently Asked Questions, available at <http://www.freshfromflorida.com/Divisions-Offices/Licensing/Frequently-Asked-Questions#Q3> (last viewed February 19, 2014).

⁹ Florida Department of Agriculture and Consumer Services, Concealed Weapon or Firearm Licensed Reports, Applications and Dispositions by County, July 01, 1999-June 30, 2000, available at http://www.freshfromflorida.com/content/download/7497/118839/07011999_06302000_cw_annual.pdf (last viewed February 10, 2014).

¹⁰ Florida Department of Agriculture and Consumer Services, Concealed Weapon or Firearm Licensed Reports, Applications and Dispositions by County, July 01, 2012-June 30, 2013, available at http://www.freshfromflorida.com/content/download/7484/118761/07012012_06302013_cw_annual.pdf (last viewed February 10, 2014).

licenses and 59,856 renewals.¹¹ As of the end of Fiscal Year 2012-2013, there were 1,098,458 valid Florida concealed weapons or firearms licenses.¹²

Applications for licensure to carry concealed weapons or firearms may be submitted in person or mailed to one of the department's eight regional offices.¹³ These regional offices are located in the following cities:

- Doral,
- Fort Walton Beach,
- Jacksonville,
- Orlando,
- Punta Gorda,
- Tallahassee,
- Tampa, and
- West Palm Beach.¹⁴

Tax Collector Authority

Article VIII, section 1(d) of the Florida Constitution provides that Tax Collectors are elected County Officers, except when provided by county charter or special law approved by the vote of the electors of the county.¹⁵ The tax collector is the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.¹⁶ Tax collections are supervised by the Department of Revenue.¹⁷

Several state agencies and departments are currently authorized to enter into agreements with tax collectors for various purposes. Some examples that are similar to the arrangement with the department contemplated by the bill include:

- The Department of State may appoint a county tax collector as an agent to accept applications for licenses or license renewals or other similar registrations.¹⁸
- The Department of Highway Safety and Motor Vehicles (DHSMV) authorizes tax collectors to act as agents of the department in matters of motor vehicle registration. DHSMV has statutory authority to install The Florida Real Time Vehicle Information System in the tax collectors offices to facilitate the agency relationship.¹⁹
- DHSMV also has a statutory mandate to enter interagency agreements with tax collectors to issue driver licenses, identification cards, and vessel registrations.²⁰
- The tax collectors may sell licenses for game hunting and fishing, as authorized by statute and the Fish and Wildlife Conservation Commission.²¹
- The Department of Business and Professional Regulation (DBPR) may enter into an agreement with county tax collectors to act as the department's agent to accept

¹¹ Id.

¹² Florida Department of Agriculture and Consumer Services, Number of Valid Florida Concealed Weapon Licenses as Reported at the End of Each Fiscal year (June 30) Since Program Inception in October 1987, *available at* http://www.freshfromflorida.com/content/download/7504/118881/NumberOfValidCWLicenses_FiscalYearEndSince1987-1988.pdf (last viewed February 10, 2014).

¹³ Florida Department of Agriculture and Consumer Services, Concealed Weapon License Application website, *available at* <http://www.freshfromflorida.com/Divisions-Offices/Licensing/Concealed-Weapon-License/Concealed-Weapon-License-Application> (last viewed February 12, 2014).

¹⁴ Florida Department of Agriculture and Consumer Services, Regional Office Locations website, *available at* <http://www.freshfromflorida.com/Divisions-Offices/Licensing/Regional-Offices/Regional-Office-Locations> (last viewed February 12, 2014).

¹⁵ FLA. CONST. art. VIII, s. 1(d).

¹⁶ Section 192.001(4), F.S.

¹⁷ Section 197.603, F.S.

¹⁸ Section 288.037, F.S.

¹⁹ Section 320.03, F.S.

²⁰ Section 322.135, F.S., s. 328.73, F.S.

²¹ Section 379.352(4), F.S.

applications for licenses or renewals of licenses to practice professions that fall within DBPR jurisdiction.²²

Effect of the Bill

The bill amends s. 790.06, F.S., to permit tax collectors approved by the department to administer fingerprints and accept applications for licensure to carry concealed weapons or firearms. Additionally, the bill creates s. 790.0625, F.S., which authorizes the department to appoint elected tax collectors for the purpose of accepting and forwarding to the department applications for concealed weapons or firearms licenses or renewals on behalf of the Division of Licensing.

To be considered by the department, tax collectors must submit a written request to the division to accept applications for concealed weapons or firearms licenses. The division has the discretion to enter into a Memorandum of Understanding (MOU) with the tax collector. The department or division has the authority to rescind the MOU for any reason at any time.

All personal identifying information provided for the license or renewal that is contained in a tax collector's records as a result of the MOU is given confidential and exempt status by the linked bill—CS/HB 525.

A tax collector appointed under the provisions of the bill is authorized to retain a convenience fee of \$22 in addition to the \$70 initial application fee submitted with the initial license application and a convenience fee of \$12 in addition to the \$60 renewal fee submitted with the renewal application. License fees collected by the tax collector are to be remitted to the department weekly.

Appointed tax collectors may not maintain a list of persons who apply for or receive a new or renewal concealed weapons or firearms license. Maintaining such a list makes the person subject to the penalty provisions of s. 790.335, F.S.

The bill authorizes approved tax collectors to administer fingerprints for license applicants. Persons who are not appointed by the department are prohibited from handling applications for any fee or compensation.

The bill creates a second degree misdemeanor for willful violations of s. 790.0625, F.S. The bill does not change eligibility criteria or license application requirements.

The bill provides an appropriation to the Department of Agriculture and Consumer Services of 11 positions and the recurring sum of \$707,608 and the nonrecurring sum of \$105,503 from the Division of Licensing Trust Fund to implement the provisions of the act.

B. SECTION DIRECTORY:

Section 1 amends s. 790.06(5), F.S., to permit the tax collectors to receive applications for a license to carry concealed weapons or firearms.

Section 2 creates s. 790.0625, F.S., authorizing the Department of Agriculture and Consumer Services to appoint tax collectors to accept applications for licensure to carry concealed weapons or firearms.

Section 3 provides an appropriation to the Department of Agriculture and Consumer Services.

Section 4 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Division of Licensing Trust Fund

The fiscal impact to the department's revenue is indeterminate. The department will continue to receive \$70 for each new application and \$60 for each renewal application for every person that applies for a license to carry concealed weapons or firearms through the tax collectors' offices, but will no longer receive the \$31.50 for fingerprint and background checks or the \$10.50 for equipment maintenance and personnel. Although the number of applications cannot be determined at this time, there is and will be sufficient revenue to support the additional operating costs.

2. Expenditures: Division of Licensing Trust Fund

| Recurring | FY 14-15 And Subsequent 2 Fiscal Years |
|--------------------------------------|---|
| Salary Rate | 259,751 |
| Salaries & Benefits | |
| (4 FTE) Compliance Officer | \$157,863 |
| (4 FTE) Corp Doc Records Examiner | 148,080 |
| (2 FTE) Systems Programmer II SES | 119,154 |
| (1 FTE) Accountant I | <u>39,466</u> |
| Total Salaries & Benefits | <u>\$464,563</u> |
| Expenses | |
| Professional package (11 FTE) | \$68,871 |
| Operating Capital Outlay (OCO) | \$170,390 |
| Electronic Fingerprinting Scanners** | |
| Human Resources Allocation (11 FTE) | <u>\$3,784</u> |
| Total Recurring Costs | <u>\$707,608</u> |

**The department plans to provide one electronic fingerprint scanner to each participating tax collector, with the annual maintenance and future replacement to be the responsibility of the tax collector. The estimated cost is for 30 units purchased over three years at an annual cost of \$170,390. If more tax collectors participate, this annual amount could increase, up to a maximum total of \$1,090,496 over multiple years (64 tax collectors @ \$17,039 per unit).

| Nonrecurring | FY 14-15 Only |
|---------------------------------|-------------------------|
| Expenses | |
| Professional Expenses (11 FTE) | \$41,503 |
| Contracted Services | |
| Programming for system set-up | \$64,000 |
| Total Nonrecurring Costs | <u>\$105,503</u> |
| Total Operating Costs | <u>\$813,111</u> |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The tax collectors will receive a \$22 convenience fee for each new application and \$12 for each renewal application for licensure to carry concealed weapons or firearms. Because the number of applications that will be received by the tax collectors' offices is unknown at this time, it cannot be determined if the \$22 or \$12 convenience fees are sufficient or exceed the amount needed to support the tax collectors' operating costs.

2. Expenditures:

Nonrecurring:

Tax collectors will be responsible for obtaining a minimum of two personal computers, a camera, document image scanner, and other equipment for a total cost of approximately \$3,000 for a minimum set-up to be able to accept applications for licensure to carry concealed weapons or firearms. Each tax collector that is accepted by the department will be responsible for this nonrecurring cost.

Recurring:

According to the tax collectors,²³ operating costs include, but are not limited to, direct and indirect labor, equipment maintenance, facility upkeep, training, and security. The amount for each office will be different depending on the location and volume of applications.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Applicants pay \$112 when applying at the Division of Licensing regional offices for new licenses and \$60 for a renewal license; applicants applying at tax collectors' offices would pay \$123.50 for a new license and \$72 for a renewal license—a difference of \$11.50 and \$12, respectively.

Local private companies provide the firearms safety and training courses required for initial licensure. If the convenience of applying at tax collectors' offices increases the number of applications, the private companies may experience an increase in revenue as a result of more individuals taking the classes.

D. FISCAL COMMENTS:

None.

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:

None.

²³ Letter from Timothy R. Qualls, lobbyist for Florida Tax Collectors, Inc., February 11, 2014, regarding operating costs (on file with the House Agriculture & Natural Resources Appropriations Subcommittee).

B. RULE-MAKING AUTHORITY:

The department is given rulemaking authority to determine what information must be included in the written request from the tax collector.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Business & Professional Regulation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute.

The strike-all amendment made the following changes to the filed version of the bill:

- Removes the amendment to s. 790.0601, F.S., prohibiting tax collectors or their employees from disclosing identifying information received pursuant to s. 790.063, F.S., from an individual applying for a license to carry concealed weapons or firearms. This provision was already provided for in the newly created s. 790.0625, F.S.
- Renumbers s. 790.063, F.S., as s. 790.0625, F.S.
- Provides definitions for department and division for s. 790.0625, F.S.
- Provides that the \$22 fee for initial application and \$12 fee for renewal application is in addition to the application fees rather than taken from the application fees.
- Provides for an appropriation for the Department of Agriculture and Consumer Services.

The staff analysis is drafted to reflect the committee substitute.

27 | concealed weapon or firearm application for a fee or
 28 | compensation unless he or she has been appointed by
 29 | the department to do so; providing for criminal
 30 | penalties; providing an appropriation and authorizing
 31 | positions; providing an effective date.

32 |

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

34 |

35 | Section 1. Subsection (5) of section 790.06, Florida
 36 | Statutes, is amended to read:

37 | 790.06 License to carry concealed weapon or firearm.—

38 | (5) The applicant shall submit to the Department of
 39 | Agriculture and Consumer Services or an approved tax collector
 40 | pursuant to s. 790.0625:

41 | (a) A completed application as described in subsection
 42 | (4).

43 | (b) A nonrefundable license fee of up ~~not to exceed~~ \$70,
 44 | if he or she has not previously been issued a statewide license,
 45 | or of up ~~a nonrefundable license fee not to exceed~~ \$60 for
 46 | renewal of a statewide license. The cost of ~~Costs for~~ processing
 47 | ~~the set of~~ fingerprints as required in paragraph (c) shall be
 48 | borne by the applicant. However, an individual holding an active
 49 | certification from the Criminal Justice Standards and Training
 50 | Commission as a "law enforcement officer," "correctional
 51 | officer," or "correctional probation officer" as defined in s.
 52 | 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the

53 | licensing requirements of this section. If such any individual
 54 | ~~holding an active certification from the Criminal Justice~~
 55 | ~~Standards and Training Commission as a "law enforcement~~
 56 | ~~officer," a "correctional officer," or a "correctional probation~~
 57 | ~~officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or~~
 58 | ~~(9)~~ wishes to receive a concealed weapons or firearms license,
 59 | he or she ~~such person~~ is exempt from the background
 60 | investigation and all background investigation fees, but must
 61 | ~~shall~~ pay the current license fees regularly required to be paid
 62 | by nonexempt applicants. Further, a law enforcement officer, a
 63 | correctional officer, or a correctional probation officer as
 64 | defined in s. 943.10(1), (2), or (3) is exempt from the required
 65 | fees and background investigation for a period of 1 year after
 66 | his or her ~~subsequent to the date of retirement of said officer~~
 67 | ~~as a law enforcement officer, a correctional officer, or a~~
 68 | ~~correctional probation officer.~~

69 | (c) A full set of fingerprints of the applicant
 70 | administered by a law enforcement agency or the Division of
 71 | Licensing of the Department of Agriculture and Consumer Services
 72 | or an approved tax collector pursuant to s. 790.0625.

73 | (d) A photocopy of a certificate, or an affidavit, or
 74 | document as described in paragraph (2)(h).

75 | (e) A full frontal view color photograph of the applicant
 76 | taken within the preceding 30 days, in which the head, including
 77 | hair, measures 7/8 of an inch wide and 1 1/8 inches high.

78 | Section 2. Section 790.0625, Florida Statutes, is created

79 to read:

80 790.0625 Appointment of tax collectors to accept
 81 applications for a concealed weapon or firearm license; fees;
 82 penalties.-

83 (1) As used in this section, the term:

84 (a) "Department" means the Department of Agriculture and
 85 Consumer Services.

86 (b) "Division" means the Division of Licensing of the
 87 Department of Agriculture and Consumer Services.

88 (2) The department, at its discretion, may appoint tax
 89 collectors, as defined in s. 1(d) of Art. VIII of the State
 90 Constitution, to accept applications on behalf of the division
 91 for concealed weapon or firearm licenses. Such appointment shall
 92 be for specified locations that will best serve the public
 93 interest and convenience in applying for these licenses.

94 (3) A tax collector seeking to be appointed to accept
 95 applications for new or renewal concealed weapon or firearm
 96 licenses must submit a written request to the division stating
 97 his or her name, address, telephone number, each location within
 98 the county at which the tax collector wishes to accept
 99 applications, and other information as required by the division.

100 (a) Upon receipt of a written request, the division shall
 101 review it and at its discretion may decline to enter into a
 102 memorandum of understanding or, if approved, enter into a
 103 memorandum of understanding with the tax collector to accept
 104 applications for new or renewal concealed weapon or firearm

105 | licenses on behalf of the department.

106 | (b) The department or the division may rescind a
 107 | memorandum of understanding for any reason at any time.

108 | (4) All personal identifying information that is provided
 109 | pursuant to s. 790.06 and contained in the records of a tax
 110 | collector appointed under this section is confidential and
 111 | exempt as provided in s. 790.0601.

112 | (5) A tax collector appointed under this section may
 113 | collect and retain a convenience fee of \$22 for each new
 114 | application and \$12 for each renewal application and shall remit
 115 | weekly to the department the license fees pursuant to s. 790.06
 116 | for deposit in the Division of Licensing Trust Fund.

117 | (6) (a) A tax collector appointed under this section may
 118 | not maintain a list or record of persons who apply for or are
 119 | granted a new or renewal license to carry a concealed weapon or
 120 | firearm. A violation of this paragraph is subject to s. 790.335.

121 | (b) A person may not handle an application for a concealed
 122 | weapon or firearm for a fee or compensation of any kind unless
 123 | he or she has been appointed by the department to do so.

124 | (7) A person who willfully violates this section commits a
 125 | misdemeanor of the second degree, punishable as provided in s.
 126 | 775.082 or s. 775.083.

127 | Section 3. For fiscal year 2014-2015, the sums of \$707,608
 128 | in recurring and \$105,503 in nonrecurring funds from the
 129 | Division of Licensing Trust Fund are appropriated to the
 130 | Department of Agriculture and Consumer Services, and 11 full-

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2014

131 | time equivalent positions with associated salary rate of 295,751
132 | are authorized, for the purpose of implementing this act.

133 | Section 4. This act shall take effect July 1, 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: Agriculture & Natural
 2 Resources Appropriations Subcommittee
 3 Representative Grant offered the following:

Amendment

Remove line 127 and insert:

7 Section 3. For the 2014-2015 fiscal year, the sums of
 8 \$736,608

10

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 47 Spiny Lobster

SPONSOR(S): Agriculture & Natural Resources Subcommittee; Raschein and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 194

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|------------|--|
| 1) Agriculture & Natural Resources Subcommittee | 11 Y, 0 N, As CS | Renner | Blalock |
| 2) Criminal Justice Subcommittee | 12 Y, 0 N | Cunningham | Cunningham |
| 3) Agriculture & Natural Resources Appropriations Subcommittee | | Massengale | Massengale <i>SM</i> |
| 4) State Affairs Committee | | | |

SUMMARY ANALYSIS

Pursuant to the Florida Fish and Wildlife Conservation Commission's (FWC) rules, both the commercial and recreational spiny lobster seasons run from August 6 through March 31. In addition, spiny lobsters may be harvested recreationally during the recreational two-day "sport season," which occurs on the last consecutive Wednesday and Thursday of July each year. FWC's rules also require spiny lobsters harvested in Florida to remain in a whole condition at all times while on or below the waters of the state. Possession of spiny lobster tails that have been wrung or separated, on or below the waters of the state, is prohibited.

Currently, s. 379.407, F.S., requires any person, firm, or corporation who violates FWC rule relating to the conservation of marine resources to be punished:

- Upon a first conviction, by imprisonment for not more than 60 days or by a fine of no less than \$100 or more than \$500, or by both fine and imprisonment.
- Upon a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of no less than \$250 or more than \$1,000, or by both fine and imprisonment.

The bill creates s. 379.407(5), F.S., to prohibit the possession of spiny lobsters during the closed season and the possession, while on the water, of spiny lobster tails that have been wrung or separated from the body. The bill creates the following penalties for persons, firms, or corporations that violate this provision:

- A first violation is a second degree misdemeanor. If the violation involves 25 or more lobster, the violation is a first degree misdemeanor.
- A second violation is a first degree misdemeanor, and the violator is subject to a suspension of all license privileges for a period not to exceed 90 days.
- A third violation is a first degree misdemeanor with a mandatory minimum term of imprisonment of 6 months. The violator may be assessed a civil penalty of up to \$2,500 and is subject to a suspension of all license privileges for a period not to exceed 6 months.
- A third violation within one year after a second violation is a third degree felony with a mandatory minimum term of imprisonment of one year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.
- A fourth or subsequent violation is a third degree felony with a mandatory minimum term of imprisonment of one year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.

The bill increases criminal penalties, imposes civil fines, and requires suspension or revocation of licenses for certain offenses relating to spiny lobsters. The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill will have an insignificant negative prison bed impact on the Department of Corrections. The bill may also have a negative jail bed impact.

The bill is effective July 1, 2014.

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

STORAGE NAME: h0047d.ANRAS.DOCX

DATE: 2/6/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Spiny Lobsters

One hundred percent of spiny lobsters commercially harvested¹ in the U.S. come from Florida, with approximately 90 percent harvested in the Florida Keys.² Chapter 379, F.S., imposes regulations to ensure the long-term sustainability of the spiny lobster, including regulations that require licensure, establish closed seasons and areas, create a lobster trap certificate program, and that impose minimum size limits, gear restrictions, and trap specifications. The Florida Fish and Wildlife Conservation Commission (FWC) regulates spiny lobster fishing that occurs in Florida waters.³

Harvest Season

According to FWC's rules, both the commercial and recreational⁴ spiny lobster seasons run from August 6 through March 31.⁵ Consequently, no person is allowed to harvest, attempt to harvest, or have in his possession, regardless of where taken, any spiny lobster during the closed season of April 1 through August 5 of each year.⁶ FWC's rules provide one exception to this prohibition by allowing spiny lobsters to be harvested recreationally during the recreational two-day "sport season," which occurs on the last consecutive Wednesday and Thursday of July each year.⁷

Wrung Tails

FWC's rules require spiny lobsters harvested in Florida to remain in a whole condition at all times while on or below the waters of the state.⁸ Possession of spiny lobster tails that have been wrung or separated, on or below the waters of the state, is prohibited.⁹

Penalties

Section 379.407, F.S., requires any person, firm, or corporation who violates any provision of ch. 379, F.S., or any FWC rule relating to the conservation of marine resources to be punished:

- Upon a first conviction, by imprisonment for not more than 60 days or by a fine of no less than \$100 or more than \$500, or by both fine and imprisonment.
- Upon a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of no less than \$250 or more than \$1,000, or by both fine and imprisonment.

A court must assess additional penalties against any commercial harvester convicted of major violations.¹⁰ For purposes of spiny lobster, a major violation is a violation of statute or FWC rules that

¹ "Harvest" means the catching or taking of spiny lobster by any means whatsoever, followed by a reduction of such spiny lobster to possession. Spiny lobsters that are caught but immediately returned to the water free, alive and unharmed are not harvested. In addition, temporary possession of a spiny lobster for the purpose of measuring it to determine compliance with the minimum size requirements does not constitute harvesting, provided that it is measured immediately after taking, and immediately returned to the water free, alive and unharmed if undersized. Rule 68B-24.002(6), F.A.C.

² FWC 2014 analysis. On file with the Agriculture & Natural Resources Subcommittee.

³ *Id.*

⁴ In Florida, in order to commercially harvest spiny lobster, a person must possess a Saltwater Products License, a Restricted Species Endorsement, and either a Spiny Lobster Endorsement (C) or a Lobster Dive Endorsement (CD). Recreational harvesting requires a valid recreational saltwater fishing license and a spiny lobster permit. FWC 2014 analysis. On file with the Agriculture & Natural Resources Subcommittee.

⁵ Rule 68B-24.005(1), F.A.C.

⁶ *Id.*

⁷ During the two-day sport season, persons may not harvest spiny lobster by any means other than by diving or with the use of a bully net or hoop net. In Monroe County, persons may not harvest spiny lobster by diving at night (from one hour after official sunset until one hour before official sunrise), or in or from the waters of John Pennekamp Coral Reef State Park. Rule 68B-24.005(2), F.A.C.

⁸ Rule 68B-24.003, F.A.C.

⁹ *Id.* Unless the spiny lobster are being imported pursuant to Rule 68B-24.0045, F.A.C., or were harvested outside the waters of the state and the wringing or separation was pursuant to a federal permit allowing such wringing or separation.

¹⁰ Section 379.407(2), F.S.

involves more than 100 illegal spiny lobsters. In such instances, the court must impose an additional penalty of \$10 for each illegal spiny lobster, or part thereof, involved in the violation.¹¹

Effect of the Bill

The bill creates s. 379.407(5), F.S., to specify that it is a major violation to possess spiny lobster during the closed season or, while on the water, to possess spiny lobster tails that have been wrung or separated from the body, unless the possession is allowed by FWC rule. Any person, firm, or corporation that violates this provision is subject to the following penalties:

- A first violation is a second degree misdemeanor.¹² If the violation involves 25 or more lobster, the violation is a first degree misdemeanor.¹³
- A second violation is a first degree misdemeanor, and the violator is subject to a suspension of all license privileges for a period not to exceed 90 days.
- A third violation is a first degree misdemeanor with a mandatory minimum term of imprisonment of 6 months. The violator may also be assessed a civil penalty of up to \$2,500 and is subject to a suspension of all license privileges for up to six months.
- A third violation within one year after a second violation is a third degree felony¹⁴ with a mandatory minimum term of imprisonment of one year. The violator must also be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.
- A fourth or subsequent violation is a third degree felony with a mandatory minimum term of imprisonment of one year. The violator must also be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.

The bill also amends s. 379.401, F.S., to conform a cross-reference.

B. SECTION DIRECTORY:

Section 1. Amends s. 379.407, F.S., relating to penalties for certain violations relating to spiny lobsters.

Section 2. Amends s. 379.401, F.S., conforming a cross-reference.

Section 3. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Although there is an increase in assessed fines based on certain offenses relating to spiny lobsters, the number of potential violators is unknown. Therefore, the amount of revenue to be collected by the Fish and Wildlife Conservation Commission is indeterminate.

2. Expenditures:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill will have an insignificant negative prison bed impact on the Department of Corrections.

¹¹ *Id.*

¹² A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The number of potential violators is unknown. Therefore, the amount of revenue to be collected for court costs is indeterminate.

2. Expenditures:

The bill imposes minimum mandatory terms of imprisonment for certain offenses relating to spiny lobsters, which could have an indeterminate, negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Commercial and recreational violators of the provisions of this bill will be subject to significant increased penalties, fines, and imprisonment.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 14, 2014, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and passed HB 47 favorably as a committee substitute (CS). The CS creates s. 379.407(5), F.S., to prohibit the possession of spiny lobster during the closed season or, while on the water, the possession of spiny lobster tails that have been wrung or separated from the body, unless the possession is allowed by FWC rule. The CS increases criminal penalties, imposes minimum mandatory terms of imprisonment, imposes civil fines, and requires suspension or revocation of licenses for those who violate s. 379.407(5), F.S.

This analysis is drafted to the CS as passed by the Agriculture & Natural Resources Subcommittee.

27 the violation involves 25 or more lobster, the violation is a
 28 misdemeanor of the first degree, punishable as provided in s.
 29 775.082 or s. 775.083.

30 (b) A second violation is a misdemeanor of the first
 31 degree, punishable as provided in s. 775.082 or s. 775.083, and
 32 such person is subject to a suspension of all license privileges
 33 under this chapter for a period not to exceed 90 days.

34 (c) A third violation is a misdemeanor of the first
 35 degree, punishable as provided in s. 775.082 or s. 775.083, with
 36 a mandatory minimum term of imprisonment of 6 months, and such
 37 person may be assessed a civil penalty of up to \$2,500 and is
 38 subject to a suspension of all license privileges under this
 39 chapter for a period not to exceed 6 months.

40 (d) A third violation within 1 year after a second
 41 violation is a felony of the third degree, punishable as
 42 provided in s. 775.082 or s. 775.083, with a mandatory minimum
 43 term of imprisonment of 1 year, and such person shall be
 44 assessed a civil penalty of \$5,000 and all license privileges
 45 under this chapter shall be permanently revoked.

46 (e) A fourth or subsequent violation is a felony of the
 47 third degree, punishable as provided in s. 775.082 or s.
 48 775.083, with a mandatory minimum term of imprisonment of 1
 49 year, and such person shall be assessed a civil penalty of
 50 \$5,000 and all license privileges under this chapter shall be
 51 permanently revoked.

52 Section 2. Paragraph (a) of subsection (2) of section

53 | 379.401, Florida Statutes, is amended to read:

54 | 379.401 Penalties and violations; civil penalties for
55 | noncriminal infractions; criminal penalties; suspension and
56 | forfeiture of licenses and permits.—

57 | (2) (a) LEVEL TWO VIOLATIONS.—A person commits a Level Two
58 | violation if he or she violates any of the following provisions:

59 | 1. Rules or orders of the commission relating to seasons
60 | or time periods for the taking of wildlife, freshwater fish, or
61 | saltwater fish.

62 | 2. Rules or orders of the commission establishing bag,
63 | possession, or size limits or restricting methods of taking
64 | wildlife, freshwater fish, or saltwater fish.

65 | 3. Rules or orders of the commission prohibiting access or
66 | otherwise relating to access to wildlife management areas or
67 | other areas managed by the commission.

68 | 4. Rules or orders of the commission relating to the
69 | feeding of wildlife, freshwater fish, or saltwater fish.

70 | 5. Rules or orders of the commission relating to landing
71 | requirements for freshwater fish or saltwater fish.

72 | 6. Rules or orders of the commission relating to
73 | restricted hunting areas, critical wildlife areas, or bird
74 | sanctuaries.

75 | 7. Rules or orders of the commission relating to tagging
76 | requirements for wildlife and fur-bearing animals.

77 | 8. Rules or orders of the commission relating to the use
78 | of dogs for the taking of wildlife.

- 79 | 9. Rules or orders of the commission which are not
- 80 | otherwise classified.
- 81 | 10. Rules or orders of the commission prohibiting the
- 82 | unlawful use of finfish traps.
- 83 | 11. All prohibitions in this chapter which are not
- 84 | otherwise classified.
- 85 | 12. Section 379.33, prohibiting the violation of or
- 86 | noncompliance with commission rules.
- 87 | 13. Section 379.407(7) ~~379.407(6)~~, prohibiting the sale,
- 88 | purchase, harvest, or attempted harvest of any saltwater product
- 89 | with intent to sell.
- 90 | 14. Section 379.2421, prohibiting the obstruction of
- 91 | waterways with net gear.
- 92 | 15. Section 379.413, prohibiting the unlawful taking of
- 93 | bonefish.
- 94 | 16. Section 379.365(2)(a) and (b), prohibiting the
- 95 | possession or use of stone crab traps without trap tags and
- 96 | theft of trap contents or gear.
- 97 | 17. Section 379.366(4)(b), prohibiting the theft of blue
- 98 | crab trap contents or trap gear.
- 99 | 18. Section 379.3671(2)(c), prohibiting the possession or
- 100 | use of spiny lobster traps without trap tags or certificates and
- 101 | theft of trap contents or trap gear.
- 102 | 19. Section 379.357, prohibiting the possession of tarpon
- 103 | without purchasing a tarpon tag.
- 104 | 20. Rules or orders of the commission prohibiting the

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2014

105 | feeding or enticement of alligators or crocodiles.

106 | 21. Section 379.105, prohibiting the intentional
107 | harassment of hunters, fishers, or trappers.


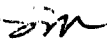
108 | Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 185 Gasoline Stations

SPONSOR(S): Business & Professional Regulation Subcommittee; Danish and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1184

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|--|--|
| 1) Business & Professional Regulation Subcommittee | 12 Y, 0 N, As CS | Butler | Luczynski |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | | Lolley  | Massengale  |
| 3) Regulatory Affairs Committee | | | |

SUMMARY ANALYSIS

There are more 9,000 gasoline stations within Florida, of which, only about 350 offer limited full-service pumping, in part, to assist disabled persons fueling their vehicles.

The bill requires the Department of Agriculture and Consumer Services to confirm, during their normal inspections, that a decal is placed on each pump for self-service gas stations. The decal must be blue, at least 15 square inches, contain the international symbol of accessibility, the words "Call for Assistance," and a phone number for the station.

The bill preempts all local laws with regards to fueling assistance for self-service gasoline stations.

There is no fiscal impact to the state or local government. According to the Florida Retail Federation, the new decals will cost station owners less than \$1 per sticker.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

The Bureau of Standards (bureau) within the Division of Consumer Services is responsible for conducting inspections at more than 25,000 retail and wholesale facilities, inspecting more than 260,000 commercial measuring devices. There are approximately 9,000 gasoline stations within Florida, and the bureau is required to inspect all gasoline pumps used for the retail sale of gasoline in this state.

Approximately 350 gasoline stations statewide provide both full-service and self-service fueling services. These stations, known as "limited full-service" stations, are required to provide refueling assistance to any motor vehicle displaying a proper exemption parking permit or license plate at the self-service islands and display a decal on the front of all self-service pumps stating these requirements.¹

Local governments have passed varying regulations with respect to fueling assistance for disabled persons. These regulations range from handicap decals and stickers, to requiring call buttons installed at each self-service gas station.

Effect of the Bill

The bill requires gasoline stations to acquire a new decal that contains the information required by the bill. The new decal must be blue, at least 15 square inches, and contain the internationally recognized symbol of accessibility. Each self-service gasoline station must place a telephone number on the decal that an operator of a vehicle may call to request assistance, and the words "Call for Assistance."

Although the bill requires self-service gasoline stations to provide a telephone number that may be used to request fueling assistance, it does not require stations to employ additional staff to provide assistance.

According to DACS, there are approximately 35,000 gasoline dispensers, and because this decal must be placed on each side of each dispenser, the bill will require at most 70,000 decals to implement.² Stations owners are required to purchase the decals on their own, each of which should cost less than \$1 per sticker.³

¹ Section 526.141(5), F.S.

² Florida Department of Agriculture and Consumer Services, Agency Analysis of 2014 House Bill 185, p. 1 (Nov. 19, 2013) (on file with the Business & Professional Regulation Subcommittee).

³ Email from Jennifer Gordon, Legislative Aide for Rep. Danish, RE: Decal Pricing Question, February 13, 2014 (on file with the Business & Professional Regulation Subcommittee, indicating that the Florida Retail Federation confirmed that the decals will cost station owners less than one dollar per sticker).

The bill requires DACS to confirm that the new decal is affixed to each pump during their normally scheduled gasoline station inspections, and to confirm that the telephone number has been prominently displayed on the decal. The bill provides that all decals are to be in place by July 1, 2016, two years after this law would go into effect, to allow ample opportunity for all stations to come into compliance.

The bill preempts and supersedes all local government laws and regulations pertaining to the provision of fueling assistance for self-service gasoline stations. This would invalidate any current requirements that a local government may have passed with regard to fueling assistance for self-service gasoline stations. This preemption will also prevent a local government from passing any new law, ordinance, or regulation, or to enact additional requirements with regard to the fueling assistance requirements of self-service gasoline stations.

B. SECTION DIRECTORY:

Section 1 amends s. 526.141, F.S., requiring self-service gasoline stations display a decal containing certain information for each pump; requiring the Department of Agriculture and Consumer Services to confirm compliance by a specified date; providing for preemption of local regulations pertaining to fueling assistance for certain motor vehicle operators.

Section 2 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Florida Retail Federation, the new decals will cost station owners less than \$1 per sticker.⁴

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

⁴ *Id.*
STORAGE NAME: h0185b.ANRAS.DOCX
DATE: 2/25/2014

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Business & Professional Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment requires a separate decal to implement the bill. The Department's inspection decal no longer needs to be modified. Because the new decal will be provided to gasoline stations through private means, the fiscal impact on the Department is removed.

The staff analysis is drafted to reflect the committee substitute.

1 A bill to be entitled

2 An act relating to gasoline stations; amending s.
 3 526.141, F.S.; requiring self-service gasoline pumps
 4 to display an additional decal containing specified
 5 information; requiring the Department of Agriculture
 6 and Consumer Services to confirm compliance by a
 7 specified date; providing for preemption of local laws
 8 and regulations pertaining to fueling assistance for
 9 certain motor vehicle operators; providing an
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsection (5) of section 526.141, Florida
 15 Statutes, is amended to read:

16 526.141 Self-service gasoline stations; attendants;
 17 regulations.—

18 (5)(a) Every full-service gasoline station offering self-
 19 service at a lesser cost shall require an attendant employed by
 20 the station to dispense gasoline from the self-service portion
 21 of the station to any motor vehicle properly displaying an
 22 exemption parking permit as provided in s. 316.1958 or s.
 23 320.0848 or a license plate issued pursuant to s. 320.084, s.
 24 320.0842, s. 320.0843, or s. 320.0845 when the person to whom
 25 such permit has been issued is the operator of the vehicle and
 26 such service is requested. Such stations shall prominently

27 | display a decal no larger than 8 square inches on the front of
 28 | all self-service pumps clearly stating the requirements of this
 29 | subsection and the penalties applicable to violations of this
 30 | subsection. The Department of Agriculture and Consumer Services
 31 | shall enforce this requirement.

32 | (b)1. The Department of Agriculture and Consumer Services,
 33 | when inspecting a station, shall confirm that a second and
 34 | separate decal is affixed to each pump. The decal must be blue,
 35 | at least 15 square inches, and clearly display the international
 36 | symbol of accessibility shown in s. 320.0842, the telephone
 37 | number of the station, and the words "Call for Assistance." The
 38 | Department of Agriculture and Consumer Services shall adopt
 39 | rules to implement and enforce this paragraph and shall confirm
 40 | that the decals conform with this paragraph and are in place by
 41 | July 1, 2016.

42 | 2. This paragraph preempts and supersedes all local
 43 | government laws and regulations pertaining to the provision of
 44 | fueling assistance to the motor vehicle operators described in
 45 | paragraph (a) by self-service gasoline stations.

46 | (c) ~~(b)~~ Violation of paragraph (a) is a misdemeanor of the
 47 | second degree, punishable as provided in s. 775.082 or s.
 48 | 775.083.

49 | Section 2. This act shall take effect July 1, 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: Agriculture & Natural
 2 Resources Appropriations Subcommittee
 3 Representative Danish offered the following:

4

5 **Amendment**

6 Remove line 33 and insert:

7 when inspecting a self-service gasoline station, shall confirm
 8 that a second and

9