Regulatory Affairs Committee

Tuesday, April 14, 2015
1:00 PM
Sumner Hall (404 HOB)

MEETING PACKET

Steve Crisafulli
Speaker

Jose Diaz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time:	Tuesday, April 14, 2015 01:00 pm
End Date and Time:	Tuesday, April 14, 2015 06:00 pm
Location:	Sumner Hall (404 HOB)
Duration:	5.00 hrs

Consideration of the following bill(s):

CS/CS/HB 107 Alcoholic Beverages by Government Operations Appropriations Subcommittee, Business & Professions Subcommittee, Steube
CS/CS/HB 391 Location of Utilities by Transportation & Economic Development Appropriations Subcommittee, Local Government Affairs Subcommittee, Ingram
CS/HB 405 Regulation of Not-for-profit Self-insurance Funds by Government Operations Appropriations Subcommittee, La Rosa
CS/HB 463 Ticket Sales by Business & Professions Subcommittee, Ingoglia
CS/CS/HB 491 Property Insurance Appraisal Umpires and Property Insurance Appraisers by Government Operations Appropriations Subcommittee, Insurance & Banking Subcommittee, Artiles
CS/HB 765 Household Moving Services by Agriculture & Natural Resources Appropriations Subcommittee, Goodson
CS/HB 895 Flood Insurance by Insurance & Banking Subcommittee, Ahern
CS/CS/HB 915 Building Codes by Government Operations Appropriations Subcommittee, Business & Professions Subcommittee, Eagle
CS/HB 1025 Firesafety for Agricultural Buildings by Insurance & Banking Subcommittee, Raburn, Combee
CS/CS/HB 1141 Natural Gas Rebate Program by Agriculture & Natural Resources Appropriations Subcommittee, Business & Professions Subcommittee, Ray
CS/HB 1219 Public Food Service Establishments by Business & Professions Subcommittee, Raulerson, Combee
CS/HB 1247 Alcoholic Beverages by Appropriations Committee, Avila, Berman
HM 1319 Financial Literacy by Williams, A.
CS/CS/HB 1325 Gainesville Regional Utilities Commission, Alachua County by Energy & Utilities Subcommittee, Local Government Affairs Subcommittee, Perry
HB 1337 Pinellas County/Alcoholic Beverage Temporary Permits by Peters

Consideration of the following proposed committee substitute(s):

PCS for CS/CS/HB 165 -- Property and Casualty Insurance
PCS for CS/HB 233 -- Countersignature
PCS for HB 301 -- Alcoholic Beverages

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Monday, April 13 2015.

By request of the Chair, all Regulatory Affairs Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, April 13, 2015.

NOTICE FINALIZED on 04/10/2015 16:26 by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Steve Crisafulli
Speaker

Jose Diaz
Chair

AGENDA

April 14, 2015
404 HOB
1:00 PM – 6:00 PM

I. Call to Order and Roll Call

II. CS/CS/HB 107 by *Government Operations Appropriations Subcommittee; Business & Professions Subcommittee; Rep. Steube and others*
Alcoholic Beverages

III. CS/CS/HB 391 by *Transportation & Economic Development Appropriations Subcommittee; Local Government Affairs Subcommittee; Rep. Ingram and others*
Location of Utilities

IV. CS/HB 405 by *Government Operations Appropriations Subcommittee; Rep. La Rosa*
Regulation of Not-for-profit Self-insurance Funds

V. CS/HB 463 by *Business & Professions Subcommittee; Rep. Ingoglia*
Ticket Sales

VI. CS/CS/HB 491 by *Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Rep. Artiles*

303 House Office Building, 402 South Monroe Street , Tallahassee, FL 32399-1300
(850) 717-4870

Property Insurance Appraisal Umpires and Property Insurance Appraisers

VII. CS/HB 765 by *Agriculture & Natural Resources Appropriations Subcommittee; Rep. Goodson*
Household Moving Services

VIII. CS/HB 895 by *Insurance & Banking Subcommittee; Rep. Ahern and others*
Flood Insurance

IX. CS/CS/HB 915 by *Government Operations Appropriations Subcommittee; Business & Professions Subcommittee; Rep. Eagle and others*
Building Codes

X. CS/HB 1025 by *Insurance & Banking Subcommittee; Reps. Raburn, Combee and others*
Firesafety for Agricultural Buildings

XI. CS/CS/HB 1141 by *Agriculture & Natural Resources Appropriations Subcommittee; Business & Professions Subcommittee; Rep. Ray and others*
Natural Gas Rebate Program

XII. CS/HB 1219 by *Business & Professions Subcommittee; Reps. Raulerson, Combee and others*
Public Food Service Establishments

XIII. CS/HB 1247 by *Appropriations Committee; Reps. Avila, Berman*
Alcoholic Beverages

XIV. HM 1319 by *Rep. A. Williams*
Financial Literacy

XV. CS/CS/HB 1325 by *Energy & Utilities Subcommittee; Local Government Affairs Subcommittee; Rep. Perry*
Gainesville Regional Utilities Commission, Alachua County

XVI. HB 1337 by *Rep. Peters*
Pinellas County/Alcoholic Beverage Temporary Permits

XVII. PCS for CS/CS/HB 165 by *Regulatory Affairs Committee*
Property and Casualty Insurance

XVIII. PCS for CS/HB 233 by *Regulatory Affairs Committee*
Countersignature

XIX. PCS for HB 301 by *Regulatory Affairs Committee*
Alcoholic Beverages

XX. ADJOURNMENT

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 107 Alcoholic Beverages
SPONSOR(S): Government Operations Appropriations Subcommittee; Business & Professions Subcommittee; Steube and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	9 Y, 4 N, As CS	Butler	Luczynski
2) Government Operations Appropriations Subcommittee	7 Y, 4 N, As CS	Topp	Topp
3) Regulatory Affairs Committee		Brown-Blake	Hamon

SUMMARY ANALYSIS

The bill sets forth requirements for alcoholic beverage manufacturers, distributors, and vendors in order to support the growth of the malt beverage industry while maintaining the three-tier system.

Package Stores and Electronic Benefits Transfer Program

- Permits package stores to have an inside entrance connecting the package store to another building or room licensed under the Beverage Law to the same licensee.
- Permits the storage and delivery of distilled spirits in and from the connected business if there is an inside entrance.
- Provides that EBT cards cannot be used to purchase alcoholic beverages.

Malt Beverage Manufacturer/Vendor Licensure Three-Tier Exceptions

- Manufacturers with Vendor's Licenses:
  - Permits a manufacturer to obtain a vendor's license at two manufacturing premises.
  - Provides for the sale of malt beverages directly to consumers for on-premises and off-premises consumption with some limitations.
- Taprooms:
  - A manufacturer may have a taproom at its licensed premises without a vendor's license to sell malt beverages directly to consumers with some limitations.
- Brewpubs:
  - May sell malt beverages brewed on premises for on-premises or off-premises consumption.
  - May sell malt beverages brewed by other manufacturers as authorized by its vendors license.

Deliveries of Alcoholic Beverages

- A licensed vendor does not need a vehicle permit for vehicles owned or leased by the vendor to transport alcoholic beverages from a distributor's place of business.

Growlers and Malt Beverage Tastings

- Specifies growlers to be containers of 32, 64, and 128 ounces; specifies packaging and labeling requirements and the licensees authorized to fill and sell growlers.
- Permits manufacturers or distributors to conduct tasting of malt beverages on a vendor's licensed premises subject to certain requirements.

Limited Malt Beverage Self-Distribution

- Permits limited self-distribution by malt beverage manufacturers to vendors not within the exclusive sales territory of a contracted distributor.

Craft Distilleries

- Permits craft distilleries to sell unlimited distilled spirits in face-to-face transactions with consumers making the purchases for personal use.

The bill is not anticipated to have a fiscal impact. The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Beverage Law

Three-Tier System

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[1]

In general, Florida's Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tiered system, alcoholic beverage excise taxes are generally collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

The three-tiered system is deeply rooted in the concept of the perceived "tied house evil," in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[2] Activities between manufacturers, distributors, and vendors are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Among those regulations, s. 561.42, F.S., prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

The following are some limited exceptions to the three-tier regulatory system:

- A manufacturer of malt beverages may obtain a vendor's license for the sale of alcoholic beverages on property that includes a brewery and promotes tourism;[3]
- A vendor may obtain a manufacturer's license to manufacture malt beverages if the vendor brews malt beverages at a single location in an amount of no more than 10,000 kegs per year and sells the beverages to consumers for consumption on the premises or consumption on contiguous licensed premises owned by the vendor;[4]
- A licensed winery may obtain up to three vendor's licenses for the sale of alcoholic beverages on a property;[5] and
- Individuals may bring small quantities of alcohol back from trips out-of-state without being held to distributor requirements.[6]

Electronic Benefits Transfer Program

Current Situation

Currently, the Florida Department of Children and Families (DCF) uses the electronic benefits transfer (EBT) cards to assist in the dissemination of the food assistance benefits and temporary cash

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[1] s. 561.02, F.S.

[2] Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board,* (June 2004), http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf .

[3] s. 561.221(2), F.S.

[4] s. 561.221(3), F.S.

[5] s. 561.221(1), F.S.

[6] s. 562.16, F.S.

assistance payments provided by federal and state government programs such as SNAP (Supplemental Nutrition Assistance Program) and TANF (Temporary Assistance for Needy Families).[7] The benefits are placed on an EBT card, which acts like a credit card with a set limit, and can be used for certain covered purchases.

Section 402.82(4), F.S., provides locations and activities for which the EBT card cannot be used. The EBT card cannot be used at "[a]n establishment licensed under the Beverage Law to sell distilled spirits as a vendor and restricted as to the types of products that can be sold under ss. 565.04 and 565.045, or in a bottle club as defined in s. 561.01."[8] Therefore the EBT card is not permitted to be used in package stores, where all alcoholic beverages, including distilled spirits are sold.[9] Additionally, the EBT card cannot be used at bars and restaurants that hold quota licenses pursuant to s. 565.02(1)(b)-(f), F.S., where alcoholic beverages including distilled spirits are sold.

Effect of the Bill

The bill expands the prohibition for the use of the EBT card by amending s. 402.82, F.S., to provide that EBT cards cannot be used to purchase an alcoholic beverage as defined in s. 561.01, F.S., and sold pursuant to the Beverage Law. This would include any alcoholic beverage sold pursuant to chs. 561, 562, 563, 564, 565, 567, and 568, F.S., including all wines, beers, and spirits.

Package Stores

Current Situation

Section 565.04, F.S., provides that vendors licensed under s. 565.02(1)(a), F.S., are not permitted to sell any merchandise in their store other than alcoholic beverages, bitters, grenadine, nonalcoholic mixers (not including juice from outside of Florida), fruit juice produced in Florida, bar and party supplies and equipment and tobacco products. Section 565.02(1)(a), F.S., creates a state license for "vendors who are permitted to sell any alcoholic beverages regardless of alcoholic content" and "operating a place of business where [alcoholic] beverages are sold only in sealed containers for consumption off the premises." The result has been the creation of "package stores," where the vendor sells the above and nothing else in an enclosed space that is separated from any other store by a wall.

The beverage law restricts businesses who sell alcoholic beverages from employing persons under the age of 18, subject to a few exceptions.[10] Package stores are not exempt from this requirement, and may only employ persons age 18 or over. Grocery stores and drug stores licensed to sell malt beverages and wine may employ persons under the age of 18.

Effect of the Bill

The bill amends s. 565.04, F.S., permitting vendors to have direct access to another building or room that is separately licensed under the Beverage Law to the same licensee, provided that the inside entrance has a door that is opened and closed by patrons and a separate outside entrance is provided.

The bill provides that distilled spirits may be stored and transported through the attached licensed business if it has an inside entrance into a package store licensed to sell distilled spirits. The bill provides that the act of selling items in a package store otherwise not permitted for sale in a package store shall not be a violation of the Beverage Law, provided the items were obtained in the separate connected licensed premises and carried through the inside entrance and the items are not displayed in the package store premises.

[7] s. 402.82(1), F.S.
[8] s. 402.82(4)(a), F.S.
[9] s. 565.04, F.S.
[10] s. 562.13, F.S.

Finally, the bill amends s. 562.13, F.S., to clarify that vendors who are allowed to employ persons under the age of 18 must have a person 18 years of age or older personally supervise the sale of any distilled spirits beverage product sold by the vendor.

Malt Beverage Manufacturer/Vendor Licensure Exceptions

Current Situation

There are a few exceptions to the three-tier regulatory system throughout the nation, where one of the three-tiers (manufacturer, distributor, or vendor) has some ownership or control interest in another tier. Two exceptions in Florida law are referred to as the "tourism exception" and the "brewpub exception."

Tourism Exception

The first exception is sometimes referred to as the Tourism Exception. In this exception, a manufacturer of malt beverages may obtain vendor's licenses for the sale of alcoholic beverages on property that includes a brewery and promotes tourism.

This exception first became law 1963, when s. 561.221, F.S., was amended to permit malt beverage manufacturers to hold one vendor's license.[11] The language was amended in 1967 to permit wine manufacturers to hold one vendor's license,[12] and again in 1978 to permit malt beverage and wine manufacturers to hold two vendor's licenses.[13] At the time, three manufacturers met the criteria to hold a vendor's license, but only one did.[14] The next amendment came in 1979,[15] when the statute was amended to permit malt beverage and wine manufacturers to hold three vendor's licenses.

In 1984,[16] the current exception was adopted into law. Chapter 84-142, Laws of Florida, amended s. 561.221, F.S., to remove malt beverage manufacturers from the provision permitting malt beverage and wine manufacturers to hold three vendor's licenses and created a new subsection permitting a malt beverage manufacturer to hold vendor's licenses on a property consisting of a single complex, including a brewery, which promotes the brewery and the tourism industry. These amendments authorized a malt beverage manufacturer to have unlimited vendor's licenses on a property contiguous to a brewery.[17] At the time, only one manufacturer took advantage of the amendment, Anheuser Busch, at its Busch Gardens location in Tampa, Florida. This provision has not been amended since 1984.

This exception permits manufacturers to obtain vendor's licenses for the sale of malt beverages at a brewery location if the vendor's license will promote tourism.[18] As interpreted by the Division, this exception permits the restaurant or taproom attached to the manufacturing premises to sell alcoholic beverages subject to the following conditions:

- Malt beverages manufactured on premises or shipped from the manufacturer's other manufacturing premises may be sold for on-premises consumption;
- Malt beverages manufactured on premises or shipped from the manufacturer's other manufacturing premises may be sold for off-premises consumption in authorized containers, including growlers; and
- Any other alcoholic beverages may be sold as authorized by the vendor's license.

[11] ch. 63-11, Laws of Fla.
[12] ch. 67-511, Laws of Fla.
[13] ch. 78-187, Laws of Fla.
[14] *Senate Staff Analysis and Economic Impact Statement*, SB 758 (1978), May 2, 1978.
[15] ch. 79-54, Laws of Fla.
[16] ch. 84-142, Laws of Fla.
[17] *Senate Staff Analysis and Economic Impact Statement*, SB 813 (1984), May 9, 1984 (CS/HB 183 was substituted for CS/SB 813).
[18] s. 561.221(2), F.S.

In Florida, a number of breweries, known as "craft breweries,"[19] have used the exception to open restaurants or taprooms attached to their breweries in order to build their brand. Between 1995 and February 2014, 90 licenses have been issued in Florida to various entities pursuant to this exception, with 33 being issued in 2012 and 2013 alone.[20] Currently in Florida, approximately 60 breweries are licensed as both manufacturers and vendors pursuant to this exception.[21]

Since 1977, the brewery industry has grown nationwide exponentially, from 89 breweries nationwide in 1977 to 2,538 in June 2013.[22] During 2013, craft brewers saw an 18 percent rise in volume and a 20 percent increase by dollars compared to 15 percent rise in volume and 17 percent increase by dollars in 2012.[23]

Brewpub Exception

The second exception where an entity may obtain both a license as a manufacturer of malt beverages and a vendor's license for the sale of alcoholic beverages is often referred to as the Brewpub Exception. This exception was added to s. 561.221, F.S., by SB 1218 (1987),[24] which amended the language to permit a vendor to be licensed as a manufacturer of malt beverages at a single location, with the following requirements:

- The brewpub may not brew more than 10,000 kegs of malt beverages on the premises per year;
- Malt beverages manufactured on premises must be sold for on-premises consumption;
- Malt beverages brewed by other manufacturers, as well as wine or liquor may be sold for on-premises consumption as authorized by its vendor's license; and
- The brewpub must keep records and pay excise taxes for the malt beverages it sells or gives to consumers.

Due to the requirement that malt beverages be sold for on-premises consumption, brewpubs are not permitted to sell growlers.

Overlap of Exceptions

The statutory language of the Tourism Exception addresses a manufacturer that wishes to hold a vendor's license to permit the sale of malt beverages directly to the public at a brewery. The statutory language of the Brewpub Exception addresses a vendor that wishes to hold a manufacturer's license to permit the brewing of malt beverages for consumption on premises at a retail location. Nevertheless, some "brewpubs" are licensed under the Tourism Exception. In some cases, these restaurants even use the word "brewpub" in the name of the business. At these manufacturers' locations, the public is able to purchase growlers. However a vendor licensed as a brewpub pursuant to the brewpub exception is not able to sell growlers to the public.

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[19] The Brewers Association defines a "craft brewer" as a small, independent and traditional brewer, with an annual production of 6 million barrels of beer or less, less than 25% owned or controlled by an alcoholic beverage industry member that is not a craft brewery, and has a majority of its total beverage alcohol volume in beers whose flavor derives from traditional or innovative brewing ingredients and their fermentation. BREWERS ASSOCIATION, *Craft Brewer Defined*, http://www.brewersassociation.org/statistics/craft-brewer-defined/ (last visited Feb. 6, 2015).

[20] Email from Dan Olson, Deputy Director of Legislative Affairs, Department of Business and Professional Regulation, Re: CMB licenses with a vendor's license issued pursuant to s. 561.221(2), F.S., by year since 1995 (Feb. 4, 2014).

[21] *Id.*

[22] BREWERS ASSOCIATION, *Brewers Association Reports Continued Growth for U.S. Craft Brewers*, (July 29, 2013), http://www.brewersassociation.org/press-releases/brewers-association-reports-continued-growth-for-u-s-craft-brewers/.

[23] BREWERS ASSOCIATION, *Craft Brewing Facts*, http://old.brewersassociation.org/pages/business-tools/craft-brewing-statistics/facts (last visited on Feb. 6, 2015).

[24] ch. 87-63, Laws of Fla.

Additionally, the Division has permitted licensees originally licensed pursuant to the Brewpub Exception to change their licensure to a manufacturer with a vendor's license under the Tourism Exception. The law created limited exceptions to the three-tier system; however, as more recently implemented, the overlap between the tiers has become more pronounced.

Come to Rest Requirements

Section 561.5101, F.S., provides that, for purposes of inspection and tax-revenue control, all malt beverages except those brewed in brewpubs pursuant to s. 561.221(3), F.S., must come to rest at the licensed premises of a distributor prior to being sold to a vendor. The exception does not include s. 561.221(2), F.S., for beer brewed at a brewery and sold at retail on the manufacturer's premises under the Tourism Exception.

Effect of the Bill

Manufacturer with Vendor's License Exception

The bill permits manufacturers to obtain a vendor's license at two manufacturing premises licensed by the manufacturer, pursuant to the following requirements:

- The manufacturing premises and the vendor's retail premises must be located on the same property, which may be separated by one street or highway.
- The premises must contain a brewery.
- The manufacturer and the vendor retail premises must be included on a sketch provided to the Division at the time of application for licensure.

The manufacturer is permitted to sell alcoholic beverages to consumers pursuant to their vendor's license in face-to-face transactions subject to the following requirements:

- Malt beverages brewed at the licensed manufacturing premises or at another manufacturing premises owned by the manufacturer to consumers:
  - For on-premises consumption.
  - For off-premises consumption in authorized containers such as cans or bottles.
  - For off-premises consumption in growlers.
- Malt beverages brewed by another manufacturer:
  - For on-premises consumption.
  - For off-premises consumption in authorized containers such as cans or bottles.
  - For off-premises consumption in growlers.
- Wine or liquor for on-premises or off-premises consumption as authorized by the vendor's license.

The manufacturer maintains responsibility to maintain records and pay excise taxes for the malt beverages it sells or gives to consumers pursuant to its vendor's license.

An entity that has applied for a manufacturer's and vendor's license at more than two licensed manufacturing premises pursuant to this paragraph before March 15, 2015, or has been issued a manufacturer's and vendor's license at more than two licensed manufacturing premises pursuant to this paragraph before July 1, 2015, may maintain the licenses previously obtained or received based on the application prior to March 15, 2015, but may not obtain or apply for additional vendor's licenses. However, manufacturers that hold both a vendor's license and a manufacturer's license must comply with the above listed requirements.

Manufacturers with vendor's licenses are prohibited from creating a chain of more than two vendor licensed manufacturing premises under common control of one entity, either directly or indirectly. However, manufacturers are not prohibited to purchase or own stock in a publicly traded corporation where the licensee does not have and does not obtain a controlling interest. For manufacturers that

hold vendor's licenses at more than two licensed manufacturing premises prior to July 1, 2015, or applied for prior to March 15, 2015, the limit of two is replaced with the actual number of manufacturing premises with vendor licenses the entity operates or obtains as a result of the application prior to March 15, 2015.

Taprooms

The bill permits manufacturers to have a taproom at a licensed manufacturing premises without obtaining a vendor's license. Manufacturers who already have two premises with both a manufacturer and vendor's license pursuant to the above exception may have a taproom at any additional manufacturing premises or at any manufacturing premises in lieu of obtaining a vendor license. Manufacturers may only have a taproom pursuant to the following requirements:

- Taprooms must be attached to the licensed manufacturing premises, which may be separated by a street or highway; and
- The manufacturing premises and taproom must be included on a sketch provided to the Division at the time of application for licensure.

The manufacturer is authorized to sell only malt beverages it brews, in a taproom through face-to-face transactions with consumers according to the following requirements:

- For on-premises consumption; and
- For off-premises consumption in growlers.

Of the malt beverages sold in the taproom, at least 70 percent must have been brewed on the licensed manufacturing premises. No more than 30 percent of the malt beverages sold in the taproom may be brewed by the manufacturer at other licensed manufacturing premises and shipped to the taproom pursuant to s. 563.022(14)(d), F.S.

The manufacturer maintains its responsibility to record and pay excise taxes for the malt beverages it sells or gives to consumers in the taproom. Furthermore, manufacturers are permitted to obtain a permanent food service license in the taproom.

Severability of the Brewery with Vendor's License Exception and Taprooms Exception

The bill provides that, if a provision of s. 561.221(2), F.S., regarding the breweries with a vendor's license exception or taprooms, as referenced above, is held invalid, or if the application of the section is held invalid, that the invalidity of the section does not affect other provisions or applications of the act.

Brewpub Exception

The bill maintains the Division's authority to issue both a manufacturer's and a vendor's license to a brewpub subject to the following requirements, in addition to the existing requirements listed above:

- The brewpub may not ship malt beverages to or between licensed brewpub premises owned by the same licensed entity pursuant to s. 563.022(14)(d), F.S.;
- The brewpub must hold a permanent food service license; and
- The brewpub shall not place malt beverages brewed on the premises into the distribution channel.

The brewpub is permitted to sell alcoholic beverages to consumers pursuant to their vendor's license in face-to-face transactions subject to the following requirements:

- Malt beverages brewed at the brewpub:
  - For on-premises consumption; and
  - For off-premises consumption in growlers.

- Malt beverages brewed by another manufacturer:
  - For on-premises consumption; and
  - For off-premises consumption in growlers if the brewpub holds a valid quota license.
- Wine or liquor for on-premises or off-premises consumption as authorized by the vendor's license.

Come to Rest Requirements

The bill exempts malt beverages brewed by a manufacturer with a vendor's license pursuant to s. 561.221(2) or (3), F.S., (Manufacturer with Vendor's License Exception, Taprooms, and Brewpubs) from the requirement that all malt beverages come to rest at the licensed premises of a distributor prior to being sold to a vendor by the distributor.

Malt Beverage Tastings

Current Situation

As part of Florida's "Tied House Evil" laws, there are many restrictions to the business and market activities between the three-tiers. Restrictions include preventing shared promotions, where a manufacturer or distributor may partner with a vendor to promote a specific product at the vendor's location.

Manufacturers and distributors are prohibited from providing malt beverages for tastings at a vendor's licensed premises, as it would be a violation of the Tied-House Evil provisions of the Beverage Law. Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. Additionally, s. 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever.

Vendors are permitted to provide alcoholic beverages directly to consumers if the alcoholic beverages are paid for by the vendor. Therefore, vendors are currently permitted to conduct malt beverage tastings using malt beverages that the vendor owns.

Effect of the Bill

The bill deletes language in s. 561.42(14)(e), F.S., prohibiting manufacturers or distributors from conducting sampling of malt beverages on a vendor's licenses premises and makes some conforming changes to the subsection.

Additionally, s. 563.09, F.S., is created to permit a manufacturer, distributor, or importer of malt beverages, or any contracted third-party agent thereof to conduct malt beverages tastings at the following locations:

- The licensed premises of a vendor authorize to sell for consumption on premises;
- The licensed premises of a vendor authored to sell in sealed containers for consumption off the premises if:
  - The vendor's licensed premises consists of at least 10,000 square feet or more interior space; or
  - The vendor is licensed pursuant to s. 565.02(1)(a), F.S.

The tastings may only be conducted as follows:

- Limited to and directed toward members of the general public of the age of legal consumption;
- If the vendor is licensed for on premises consumption, served in a cup, glass, or other open container; and
- If the vendor is only licensed for off premises consumption, be provided to the consumer in a tasting cup with a capacity of 3.5 ounces or less.

The manufacturer or distributor may purchase the malt beverages from the vendor at no more than retail price.

The manufacturer or distributor conducting the tastings shall:

- Provide the malt beverages used in the tasting;
- The total volume of the product offered for tasting may not exceed 576 ounces;
- Not pay a fee or provide any compensation to the vendor;
- Properly dispose of any remaining beverages or return any unconsumed malt beverages to the manufacturer's or distributor's inventory; and
- Must complete any applicable reports and pay applicable excise taxes, even if the manufacturer or distributor contracts with a third-party agent to conduct the tasting.

More than one tasting may be held on a licensed premises each day, but only one tasting event may be conducted at any one time.

The bill does not alter a vendor's rights to conduct tastings under the current law, and is supplemental to any special act or ordinance. The bill provides rulemaking authority for the division to adopt rules to implement the tastings provision.

Deliveries of Alcoholic Beverages

Current Situation

A licensed vendor is permitted to transport alcoholic beverage purchased directly from a distributor's place of business to the vendor's licensed premises or off-premises storage, so long as the vendor or any person disclosed on the application owns or leases the vehicle used for transport and that the vehicle was disclosed to the Division and a permit is issued for the vehicle. The person whose name is included in the permit application must be the person that operates the vehicle during transport.[25]

In order to obtain a vehicle permit for the transport of alcoholic beverages, the licensee must submit an application with a $5 fee per vehicle to the Division. Permits do not expire unless the licensee disposes of the vehicle, the vendor's license is transferred, canceled, or not renewed, or is revoked. The vendor may request that a permit be canceled.[26]

By accepting a vehicle permit, the vendor or person disclosed on the application agrees the vehicle is subject to inspection and search without a search warrant, to ensure the vendor is complying with the Beverage Law. The inspection may be completed by authorized Division employees, sheriffs, deputy sheriffs, and police officers during business hours or when the vehicle is being used to transport alcoholic beverages. The vehicle permit and invoice or sales ticket for the alcoholic beverage in the vehicle must be carried in the vehicle while the vehicle is being used to transport alcoholic beverages.

Pursuant to s. 562.07, F.S., alcoholic beverages cannot be transported in quantities of more than 12 bottles except by:

- Common Carriers;
- In owned or leased vehicles of licensed vendors or authorized persons transporting the alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage if the vehicle has the required permit;
- Individuals who possess the beverages not for resale;

[25] s. 561.57(3), F.S.
[26] s. 561.57(4), F.S

- Licensed manufacturers, distributors, or vendors delivery of alcoholic beverages away from their place of business in vehicles owned or leased by the licensees; or
- A vendor, distributor, pool buying agent, or salesperson of wine and spirits as outlined in s. 561.57(5), F.S.

Effect of the Bill

The bill amends s. 561.57(3) and (4), F.S., to allow a licensed vendor to transport alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage permitted by the Division without a vehicle permit if the vehicle is owned or leased by the vendor. However, a vehicle permit shall be required if the vehicle is owned or leased by a person listed on the vendor's license.

Additionally, the bill maintains the requirement to possess an invoice or sales ticket during the transportation of alcoholic beverages.

Finally, the bill amends s. 562.07, F.S., by amending entities and individuals that can transport alcoholic beverages in quantities of more than 12 bottles to include:

- Common carriers;
- Individuals who possess the beverages not for resale; and
- Licensed manufacturers, distributors, or vendors transporting alcoholic beverages pursuant to s. 561.57, F.S.

Container Sizes and Growlers

Current Situation

Standard Containers

Currently, s. 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors be packaged in individual containers of no more than 32 ounces. However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverages regardless of individual container type. The industry developed bottles, cans, kegs, and other containers, as well as the shipping equipment to protect and distribute bottles, cans, and kegs based on industry standard sizes. Distributors have created a nationwide distribution system with the capacity to transport industry standard sized containers.[27]

Growlers

Some states permit vendors to sell malt beverages in containers known as growlers, which typically are reusable containers of 32 or 64 ounces that the consumer can take to a manufacturer/vendor to be filled with malt beverage for consumption off the licensed premises.[28] The standard size for a growler is 64 ounces.[29] Florida malt beverage law does not specifically address growlers.

Florida malt beverage law does not permit the use of 64 ounce containers or any other container size between 32 ounces and one gallon. As a result, growlers are prohibited in any sizes other than 32 ounces or less, and one gallon.

[27] Testimony, Workshop on Craft Brewers Business Development Regulatory Issues, Business & Professional Regulation Subcommittee (Jan. 9, 2013).
[28] BeerAdvocate, *The Growler: Beer-To-Go!,*(July 31, 2002) http://www.beeradvocate.com/articles/384/.
[29] Brew-Tek, *What is a Growler?*, http://www.brew-tek.com/products/growlers/what-is-a-growler/ (last visited Feb. 6, 2015).

Effect of the Bill

Container Size

The bill provides that authorized containers as defined in s. 563.06(6), F.S., do not include growlers. A new subsection is created to define growlers, set requirements for growlers, and indicate license types authorized to fill growlers. The new container sizes authorized for use as growlers are limited to use as specified and may not be used for purposes of distribution or sale outside the manufacturer's or vendor's licensed premises.

Growlers

The bill defines growlers as a container of 32, 64, and 128 ounces in volume, originally manufactured to hold malt beverages. The requirement that the container be originally manufactured to hold malt beverages insures the exclusion of containers such as empty soda bottles, milk jugs, or other containers not manufactured strictly to hold malt beverages.

Licensees may fill or refill growlers with malt beverages as follows:

- Malt beverages brewed by the manufacturer or brewpub at the following locations:
  - A taproom attached to the manufacturer's premises pursuant to s. 561.221(2)(a), F.S.;
  - An attached vendor's premises licensed pursuant to s. 561.221(2)(b), F.S.; and
  - A brewpub licensed pursuant to s. 561.221(3), F.S.
- Malt beverages brewed by any manufacturer if the vendor/manufacturer holds a valid quota license pursuant to ss. 561.20(1) and 565.20(1)(a)-(f), F.S., at the following locations:
  - An attached vendor's premises licensed pursuant to s. 561.221(2)(b), F.S.;
  - A brewpub licensed pursuant to s. 561.221(3), F.S.; and
  - Any vendor's licensed premises.
- Malt beverages brewed by any manufacturer if the vendor filling the growler obtains at least 80 percent of its annual gross revenues from the sale of malt beverages, the sale of wine, or the sale of both malt beverages and wine, and the vendor does not hold a manufacturer's license.

Growlers must meet the following requirements:

- Have an unbroken seal or be incapable of being immediately consumed;
- Be clean prior to filling; and
- Have a label that sufficiently covers an existing identifying mark from another manufacturer to indicate the malt beverage placed in the growler, and indicates:
  - Name of the manufacturer
  - Brand
  - Volume
  - Percentage of alcohol by volume
  - Federal health warning.

The bill provides that it is legal to possess and transport empty growler containers.

Limited Malt Beverage Self-Distribution

Current Situation

Currently, manufacturers may ship malt beverages between manufacturing locations pursuant to an exception in s. 563.022(14)(d), F.S., which permits a manufacturer to ship products between its licensed manufacturing premises without a distributor's license. Further, manufacturers of malt beverages may only sell their product to a distributer except under certain exceptions where they are permitted to sell directly to consumers at its manufacturing premises.

Effect of the Bill

The bill provides for limited self-distribution by any malt beverage manufacturer. However, a brewpub licensed under s. 561.221(3), F.S., is not a manufacturer for purposes of this provision. Any malt beverage manufacturer may sell and ensure receipt of no more than 2,000 total kegs of malt beverages per year directly to vendors. The manufacturer is required to use its own vehicles to deliver malt beverages to licensed vendors.

In addition, a manufacturer may only self-distribute malt beverages that are packaged in bulk, such as kegs or barrels, and to vendors who are not within the exclusive sales territory of a distributor with whom the manufacturer is under contract.

While this provision will permit any malt beverages manufacturer to make limited sales and delivery of products directly to vendors, it is expected to serve as a mechanism to assist new manufacturers in establishing customers.[30]

The manufacturer is responsible for keeping records and paying excise taxes for the malt beverages it sells or gives to vendors. The reports shall distinguish between malt beverages the manufacturer self-distributed and those sold directly to consumers by the manufacturer pursuant to s. 561.221(2), F.S.

Craft Distilleries

Current Situation

As noted above, there are some exceptions to the three-tier regulatory system. In 2013, s. 565.03, F.S., was amended to create another exception to the three-tier regulatory system regarding the manufacture and sale of distilled spirits.[31] "Distillery" is defined as "a manufacturer of distilled spirits." "Craft distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises and notifies the Division of the desire to operate as a craft distillery.[32] A craft distillery is permitted to sell the distilled spirits it produces to consumers for off-premise consumption. Sales of the spirits must be made on "private property" contiguous to the distillery premises at a souvenir gift shop operated by the distillery. Once a craft distillery's production limitations have been surpassed (75,000 gallons), the craft distillery is required to notify the Division within five days and immediately cease sales to consumers.

Craft distilleries are prohibited from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and caps the total sales to each consumer at two or less containers per customer per calendar year. In addition, the craft distilleries are prohibited from shipping their distilled spirits to consumers.

Effect of the Bill

The bill amends the definition of "distillery" to mean "a manufacturer that distills ethyl alcohol or ethanol to create distilled spirits. Additionally, the bill permits craft distilleries to sell unlimited distilled spirits in face-to-face transactions with consumers making the purchases for personal use.

B. SECTION DIRECTORY:

Section 1 amends s. 402.82, 2 F.S., prohibiting electronic benefits transfer cards from being used or accepted to purchase an alcoholic beverage.

[30] Testimony, Workshop on Craft Brewers Business Development Regulatory Issues, Business & Professional Regulation Subcommittee (Oct. 9, 2013).
[31] ch. 2013-157, Laws of Fla.
[32] s. 565.03(1)(a), F.S.

Section 2 amends s. 561.221, F.S., modifying exceptions to the three-tier system.

Section 3 amends s. 561.42, F.S., deleting a prohibition against certain entities conducting malt beverage tastings; conforming provisions.

Section 4 amends s. 561.5101, F.S., conforming a cross-reference.

Section 5 amends s. 561.57, F.S., deleting permit requirement on the vehicles that are owned or leased by a vendor, for the vendor to transport alcoholic beverages.

Section 6 amends s. 562.07, F.S., conforming provisions.

Section 7 amends s. 562.13, F.S., amending employment restrictions for Beverage Law vendors to prevent a person under the age of 18 selling distilled spirits without supervision.

Section 8 amends s. 562.34, F.S., providing that possessing and transporting a growler is lawful.

Section 9 amends s. 563.022, F.S., providing limited self-distribution for manufacturers.

Section 10 amends s. 563.06, F.S., providing requirements for growlers.

Section 11 creates s. 563.09, F.S., authorizing a licensed distributor or manufacturer of malt beverages to conduct a malt beverage tasting and providing requirements and limitations.

Section 12 amends s. 565.03, F.S., deleting restrictions on the sale of individual containers to consumers in a face-to-face transaction at a craft brewery.

Section 13 repeals s. 565.04, F.S., repealing the provision regulating alcoholic beverage package stores.

Section 14 provides construction and severability.

Section 15 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Growlers: The bill may help generate additional revenue by authorizing taprooms and other licensees to begin selling growlers or to add the 64 ounce size growler.

D. FISCAL COMMENTS:

The Department of Business and Professional Regulation indicates that the bill will have no fiscal impact.[33]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Division will likely need to amend applications for licensure, requiring the rule adopting the form to undergo the rulemaking process. Otherwise, there is no mandatory rulemaking or rulemaking authority in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 5 amends s. 561.57, F.S., and regulates persons besides the vendor who may transport alcoholic beverages from a distributor's place of business. The phrase "a person who is authorized by a vendor" on lines 412-413 may be ambiguous and may be interpreted broader than intended. The phrase should be revised to clarify specifically who is authorized.

Section 7 amends s. 562.13, F.S., and regulates the age of a person a vendor under the Beverage Law may employ. This language is no longer necessary following the March 24, 2015, amendments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2015, the Business & Professions Subcommittee adopted eight amendments and reported the bill favorably as a committee substitute. The amendments:

- Amended the title to "relating to alcoholic beverages";
- Removed the ability for non-vendor licensed taprooms to sell malt beverages packaged in bottles or cans;
- Updated the malt beverages tastings language to provide sampling size guidelines, maximum volume of tasting product allowed per tasting, clarification on excise taxes, and other clarifications;
- Restored the vehicle permit requirement for vehicles used to transport alcoholic beverages that are owned or leased by persons on the vendor's license;

[33] Department of Business and Professional Regulation e-mail to staff of the Government Operations Subcommittee, on file with the subcommittee.

- Updated the Beverage Law employment provisions to ensure a person of 18 years of age or older supervises the sale of distilled spirits at a vendor that is permitted to employ persons under the age of 18;
- Revised the guidelines and regulations for limited self-distribution for manufacturers; and
- Limited "growlers" to individual containers of 32, 64, and 128 ounces by volume originally manufactured to hold malt beverages.

On March 24, 2015, the Government Operations Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed the amendments to the statutes regulating franchise agreements between malt beverage manufacturers and distributors, except as to providing for limited self-distribution.
- Amended provisions regarding package stores by permitting package stores to have direct access to an attached building or room licensed under the Beverage Law to the same licensee through an inside entrance that may be opened or closed by patrons.
- Permitted the storage and transport of distilled spirits in and through a connected building or room to a package store when there is an inside entrance providing direct access to the package store and both the building and package store are owned or operated by the same licensee.
- Provided that the sale of items otherwise not permitted in a package store is not a violation of the Beverage Law if the items are obtained in a connected building or room and carried through the inside entrance to the package store, and the items are not displayed in the package store.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to alcoholic beverages; amending s. 402.82, F.S.; conforming provisions; prohibiting electronic benefits transfer cards from being used or accepted to purchase an alcoholic beverage; amending s. 561.221, F.S.; providing requirements for a licensed manufacturer of malt beverages to sell such beverages directly to consumers; providing operation requirements for a taproom; prohibiting a manufacturer from holding a vendor's license at specified premises; providing requirements for a licensed manufacturer to obtain a vendor's license; specifying circumstances under which a manufacturer may sell alcoholic beverages under its vendor's license; requiring a manufacturer to complete certain reports; providing applicability; providing requirements for a brewpub to be licensed as a manufacturer or vendor; providing requirements for a brewpub to sell alcoholic beverages to consumers; amending s. 561.42, F.S.; deleting a prohibition against certain entities conducting tastings; revising requirements for promotional displays and advertising; amending s. 561.5101, F.S.; conforming a cross-reference; amending s. 561.57, F.S.; revising restrictions on the vehicle required for use by a vendor who transports alcoholic beverages; modifying provisions related to vehicle

permits for vendors; requiring a vendor or authorized person who transports alcoholic beverages to possess a specified invoice or sales ticket; amending s. 562.07, F.S.; conforming provisions; amending s. 562.13, F.S.; providing exceptions and requirements for a minor employed by a specified vendor to sell alcoholic beverages; amending s. 562.34, F.S.; providing that possessing and transporting a growler is lawful; amending s. 563.022, F.S.; providing for limited self-distribution for manufacturers of malt beverages; amending s. 563.06, F.S.; defining the term "growler"; providing requirements for growlers; creating s. 563.09, F.S.; authorizing a licensed manufacturer, distributor, or importer of malt beverages to conduct a malt beverage tasting; providing requirements and limitations; amending s. 565.03, F.S.; revising the definition of the term "distillery"; deleting restrictions on the sale of individual containers to consumers in a face-to-face transaction; amending s. 565.04, F.S.; requiring package stores to have no more than one direct access to another building licensed under the Beverage Law to the same licensee; providing for the delivery of distilled spirits to a licensed premises that has an inside entrance to a package store; authorizing the sale of items obtained in the connected separately licensed premises; providing

construction and severability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 402.82, Florida Statutes, is amended to read:

402.82 Electronic benefits transfer program.—

(4) Use or acceptance of an electronic benefits transfer card is prohibited at the following locations or for the following activities:

(a) The purchase of an alcoholic beverage as defined in s. 561.01 and sold pursuant to the Beverage Law ~~An establishment licensed under the Beverage Law to sell distilled spirits as a vendor and restricted as to the types of products that can be sold under ss. 565.04 and 565.045 or a bottle club as defined in s. 561.01~~.

Section 2. Subsections (2) and (3) of section 561.221, Florida Statutes, are amended to read:

561.221 Retail exceptions to manufacturing licenses; brewing exceptions to vendor licenses ~~Licensing of manufacturers and distributors as vendors and of vendors as manufacturers~~; conditions and limitations.—

(2) A manufacturer of malt beverages that is licensed and engaged in the manufacture of malt beverages in this state may sell directly to consumers in face-to-face transactions, which,

notwithstanding s. 561.57(1), requires the physical presence of the consumer to make payment for and take receipt of the beverages on the licensed manufacturing premises, as follows:

(a) At a taproom, a manufacturer may sell malt beverages brewed by the manufacturer to consumers for on-premises or off-premises consumption without obtaining a vendor's license. A manufacturer of malt beverages shall comply with the following requirements related to a taproom:

1. The taproom must be a room or rooms located on the licensed manufacturing premises consisting of a single complex that includes a brewery. Such premises may be divided by no more than one public street or highway. The taproom shall be included on the sketch or diagram defining the licensed premises submitted with the manufacturer's license application pursuant to s. 561.01(11). All sketch or diagram revisions by the manufacturer must be approved by the division, verifying that the taproom operated by the licensed manufacturer is owned or leased by the manufacturer and is located on the licensed manufacturing premises.

2. At least 70 percent by volume of the malt beverages sold or given to consumers per calendar year in the taproom must be brewed on the licensed manufacturing premises. No more than 30 percent by volume of the malt beverages sold or given per calendar year to consumers in the taproom may be brewed by the manufacturer at other manufacturing premises and shipped to the licensed manufacturing premises pursuant to s. 563.022(14)(d).

3. Malt beverages may be sold to consumers in the taproom for off-premises consumption in authorized containers pursuant to s. 563.06(7).

4. A manufacturer of malt beverages is responsible for paying applicable excise taxes to the division and submitting applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages sold or given to consumers in the taproom each month.

5. This paragraph does not preclude a licensed manufacturer of malt beverages that operates a taproom from holding a permanent public food service establishment license under chapter 509 at the taproom.

6. A manufacturer may not hold a vendor's license at a licensed manufacturing premises that operates a taproom pursuant to this paragraph.

(b) In lieu of a taproom, on or after July 1, 2015, the division may ~~is authorized to~~ issue vendor's licenses to a manufacturer of malt beverages at no more than two licensed manufacturing premises for which the manufacturer has an interest, directly or indirectly, in the license if the manufacturer meets the following requirements:

1. A licensed manufacturer may obtain one vendor's license at no more than two of the licensed manufacturing premises for which the manufacturer has an interest, directly or indirectly, in the license. Any additional licensed manufacturing premises, for which the manufacturer has an interest, directly or

indirectly, in the license, may operate a taproom without a vendor's license pursuant to paragraph (a).

2. The vendor's license must be located on the licensed manufacturing premises consisting of a single complex that includes a brewery. Such premises may be divided by no more than one public street or highway. The licensed vendor premises shall be included on the sketch or diagram defining the licensed premises submitted with the manufacturer's license application pursuant to s. 561.01(11). All sketch or diagram revisions by the manufacturer must be approved by the division, verifying that the vendor premises operated by the licensed manufacturer is owned or leased by the manufacturer and is located on the licensed manufacturing premises.

3. The manufacturer may sell alcoholic beverages under its vendor's license as follows:

a. Malt beverages manufactured on the licensed manufacturing premises or at another licensed manufacturing premises for which the manufacturer has an interest, directly or indirectly, in the license for:

(I) On-premises consumption.

(II) Off-premises consumption in authorized containers pursuant to s. 563.06(6).

(III) Off-premises consumption in growlers pursuant to s. 563.06(7).

b. Malt beverages manufactured exclusively by other manufacturers for:

(I) On-premises consumption.

(II) Off-premises consumption in authorized containers pursuant to s. 563.06(6).

(III) Off-premises consumption in growlers pursuant to s. 563.06(7).

c. Any wine or liquor for on-premises or off-premises consumption as authorized under its vendor's license.

4. A manufacturer of malt beverages pursuant to this paragraph is responsible for paying applicable excise taxes to the division and submitting applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages manufactured and sold pursuant to its vendor's license or given to consumers.

5. This paragraph does not preclude a licensed manufacturer of malt beverages with a vendor's license from holding a permanent public food service establishment license under chapter 509 on the licensed manufacturing premises.

6. An entity that applies for a manufacturer's and vendor's license at more than two licensed manufacturing premises pursuant to this paragraph before March 15, 2015, or that is issued a manufacturer's and vendor's license at more than two licensed manufacturing premises pursuant to this paragraph before July 1, 2015, may maintain the licenses previously obtained or received based on such application, but may not obtain or apply for an additional vendor's license. However, except as to the allowance for manufacturers holding a

vendor's license at more than two licensed manufacturing premises before July 1, 2015, a vendor's license held by a manufacturer of malt beverages pursuant to this paragraph, regardless of when first obtained, is subject to subparagraphs 1.-5.

7. An entity with direct or indirect interests in vendor licenses issued to not more than two licensed manufacturing premises under this paragraph may not be related, directly or indirectly, to any other entity with direct or indirect interest in other vendor licenses issued to other separate manufacturing premises. This subparagraph prohibits the creation of a chain of more than two vendor licensed manufacturing premises under common control of entities with direct or indirect interests in such vendor licensed manufacturing premises. This subparagraph does not prohibit the purchase or ownership of stock in a publicly traded corporation where the licensee does not have and does not obtain a controlling interest in the corporation. An entity lawfully operating more than two licensed manufacturing premises with vendor licenses pursuant to subparagraph 6. may exceed the limit of two licenses with the actual number of manufacturing premises with vendor licenses operated by the entity~~, even if such manufacturer is also licensed as a distributor, for the sale of alcoholic beverages on property consisting of a single complex, which property shall include a brewery and such other structures which promote the brewery and the tourist industry of the state. However, such property may be~~

~~divided by no more than one public street or highway~~.

(3) The division may issue a manufacturer's license and a vendor's license to a brewpub. To operate as a brewpub, the following requirements must be met:

(a) ~~Notwithstanding other provisions of the Beverage Law, any vendor licensed in this state may be licensed as a manufacturer of malt beverages upon a finding by the division that:~~

~~1.~~ The brewpub must ~~vendor will~~ be engaged in brewing malt beverages at the licensed brewpub premises ~~a single location and~~ in an amount that does ~~which will~~ not exceed 10,000 kegs per calendar year. For purposes of this paragraph ~~subsection~~, the term "keg" means 15.5 gallons.

(b) A brewpub may sell the following alcoholic beverages in a face-to-face transaction with a consumer:

1. Malt beverages manufactured on the licensed brewpub premises for:

a. On-premises consumption.

b. Off premises consumption in growlers, pursuant to s. 563.06(7).

2. Malt beverages manufactured by other manufacturers for:

a. On-premises consumption.

b. Off premises consumption in growlers if the brewpub holds a valid quota license pursuant to s. 563.06(7).

3. Wine or liquor for on-premises consumption as authorized under its vendor's license.

(c) A brewpub may not ship malt beverages to or between licensed brewpub premises owned by the licensed entity. A brewpub is not a manufacturer for the purposes of s. 563.022(14)(d).

(d) A brewpub may not distribute malt beverages.

(e) A brewpub must hold a permanent public food service establishment license under chapter 509.

~~2. The malt beverages so brewed will be sold to consumers for consumption on the vendor's licensed premises or on contiguous licensed premises owned by the vendor.~~

(f)~~(b)~~ As a manufacturer, a brewpub is ~~Any vendor which is also licensed as a manufacturer of malt beverages pursuant to this subsection shall be~~ responsible for payment of applicable excise taxes to the division and applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages ~~beverage~~ manufactured each month ~~and shall pay applicable excise taxes thereon to the division by the 10th day of each month for the previous month~~.

(g)~~(c)~~ A ~~It shall be unlawful for any~~ licensed distributor of malt beverages or any officer, agent, or other representative thereof may not ~~to~~ discourage or prohibit a brewpub ~~any vendor~~ licensed ~~as a manufacturer~~ under this subsection from offering malt beverages brewed for consumption on the licensed premises of the brewpub ~~vendor~~.

(h)~~(d)~~ A ~~It shall be unlawful for any~~ manufacturer of malt beverages or any officer, agent, or other representative thereof

may not ~~to~~ take any action to discourage or prohibit a ~~any~~ distributor of the manufacturer's product from distributing such product to a brewpub ~~licensed vendor which is also~~ licensed ~~as a manufacturer of malt beverages~~ pursuant to this subsection.

Section 3. Subsection (14) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(14) The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any ~~broker,~~ sales agent~~,~~ or sales person thereof; however:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the industry member who

initially purchased them, without limitation in total dollar value of such items sold to a vendor.

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter.

(c) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the industry member who initially purchased them, and ~~but~~ may be sold without limitation in total value of such items sold to a vendor.

(d) A manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, may provide consumer advertising specialties described in paragraph (c) to consumers on any vendor's licensed premises.

~~(e) Manufacturers, distributors, importers, brand owners, or brand registrants of beer, and any broker, sales agent, or sales person thereof, shall not conduct any sampling activities~~

~~that include tasting of their product at a vendor's premises licensed for off-premises sales only.~~

(e)~~(f)~~ A manufacturer ~~Manufacturers~~, distributor ~~distributors~~, importer ~~importers~~, brand owner ~~owners~~, or brand registrant ~~registrants~~ of malt beverages ~~beer~~, and any ~~broker,~~ sales agent~~,~~ or sales person thereof or contracted third-party, may ~~shall~~ not engage in cooperative advertising with a vendor and may not name a vendor in any advertising for a malt beverage tasting authorized under s. 563.09 ~~vendors~~.

(f)~~(g)~~ A distributor ~~Distributors~~ of malt beverages ~~beer~~ may sell to a vendor ~~vendors~~ draft equipment and tapping accessories at a price not less than the cost to the industry member who initially purchased them, except there is no required charge, and the ~~a~~ distributor may exchange any parts that ~~which~~ are not compatible with a competitor's system and are necessary to dispense the distributor's brands. A distributor of malt beverages ~~beer~~ may furnish to a vendor at no charge replacement parts of nominal intrinsic value, including, but not limited to, washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers.

Section 4. Subsection (1) of section 561.5101, Florida Statutes, is amended to read:

561.5101 Come-to-rest requirement; exceptions; penalties.—

(1) For purposes of inspection and tax-revenue control, all malt beverages, except those manufactured and sold by the same licensee, pursuant to s. 561.221(2) or (3) ~~s. 561.221(3)~~,

must come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The prohibition contained in this subsection does not apply to the shipment of malt beverages commonly known as private labels. The prohibition contained in this subsection shall not prevent a manufacturer from shipping malt beverages for storage at a bonded warehouse facility, provided that such malt beverages are distributed as provided in this subsection or to an out-of-state entity.

Section 5. Subsections (3) and (4) of section 561.57, Florida Statutes, are amended to read:

561.57 Deliveries by licensees.—

(3) A licensed vendor may transport alcoholic beverage purchases from a distributor's place of business to the vendor's licensed premises or off-premises storage. A vendor may transport alcoholic beverage purchases in a vehicle~~, if the vehicle used to transport the alcoholic beverages is~~ owned or leased by the vendor ~~or any~~ without a permit. A person who has been disclosed on a license application filed by the vendor may use a vehicle not owned or leased by the vendor to transport alcoholic beverages ~~and approved by the division and~~ if a valid vehicle permit has been issued for such vehicle. A vehicle owned or leased by a person disclosed on a license application filed by the vendor and approved by the division under this section ~~subsection~~ must be operated by such person when transporting alcoholic beverage purchases from a distributor's place of

business to the vendor's licensed premises or off-premises storage.

(4) A vehicle permit may be obtained for a vehicle not owned or leased by the vendor by ~~a licensed vendor or~~ any person authorized in subsection (3) upon application and payment of a fee of $5 per vehicle to the division. The signature of the person authorized in subsection (3) must be included on the vehicle permit application. Such permit remains valid and does not expire unless the vendor or any person authorized in subsection (3) disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division, whichever occurs first. ~~The division shall cancel a vehicle permit issued to a vendor upon request from the vendor.~~ The division shall cancel a vehicle permit issued to any person authorized in subsection (3) upon request from that person or the vendor. By acceptance of a vehicle permit, the ~~vendor or any~~ person authorized in subsection (3), who intends to use a vehicle not owned or leased by the vendor, agrees that such vehicle is always subject to inspection and search without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times that the vehicle is being used to transport ~~or deliver~~ alcoholic beverages. A vehicle permit issued under this subsection ~~and invoices or sales~~

~~tickets for alcoholic beverages purchased and transported~~ must be carried in the vehicle used by the ~~vendor or any~~ person authorized in subsection (3) when the vendor's alcoholic beverages are being transported ~~or delivered~~. A vendor or a person who is authorized by a vendor to transport or deliver alcoholic beverages under this section must possess an invoice or sales ticket when possessing such beverages in a vehicle and transporting the alcoholic beverages.

Section 6. Section 562.07, Florida Statutes, is amended to read:

562.07 Illegal transportation of beverages.—It is unlawful for alcoholic beverages to be transported in quantities of more than 12 bottles except as follows:

(1) By common carriers;

~~(2) In the owned or leased vehicles of licensed vendors or any persons authorized in s. 561.57(3) transporting alcoholic beverage purchases from the distributor's place of business to the vendor's licensed place of business or off-premises storage and to which said vehicles are carrying a permit and invoices or sales tickets for alcoholic beverages purchased and transported as provided for in the alcoholic beverage law;~~

(2)~~(3)~~ By individuals who possess such beverages not for resale within the state;

(3)~~(4)~~ By licensed manufacturers, distributors, or vendors transporting ~~delivering~~ alcoholic beverages under s. 561.57 ~~away from their place of business in vehicles which are owned or~~

~~leased by such licensees~~; and

(4)~~(5)~~ By a vendor, distributor, pool buying agent, or salesperson of wine and spirits as outlined in s. 561.57(5).

Section 7. Paragraph (c) of subsection (2) of section 562.13, Florida Statutes, is amended to read:

562.13 Employment of minors or certain other persons by certain vendors prohibited; exceptions.—

(2) This section shall not apply to:

(c) Persons under the age of 18 years who are employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations licensed under ss. 563.02(1)(a) and 564.02(1)(a). This exception also includes a vendor licensed under s. 565.02(1)(a) whose gross monthly sales of alcoholic beverages do not exceed 30 percent of its total gross sales of products and services. A person 18 years of age or older must personally supervise the sale of a distilled spirits beverage product by verifying the age of the purchaser to be 21 years of age or older and approving the sale ~~which have obtained licenses to sell beer or beer and wine, when such sales are made for consumption off the premises~~.

However, a minor to whom this subsection otherwise applies may not be employed if the employment, whether as a professional entertainer or otherwise, involves nudity, as defined in s. 847.001, on the part of the minor and such nudity is intended as a form of adult entertainment.

Section 8. Subsections (1) and (3) of section 562.34, Florida Statutes, are amended to read:

562.34 Containers; seizure and forfeiture.—

(1) A ~~It shall be unlawful for any~~ person may not ~~to~~ have in her or his possession, custody, or control any cans, jugs, jars, bottles, vessels, or any other type of containers which are being used, are intended to be used, or are known by the possessor to have been used to bottle or package alcoholic beverages; however, this subsection does ~~provision shall~~ not apply to a ~~any~~ person properly licensed to bottle or package such alcoholic beverages, a ~~or to any~~ person intending to dispose of such containers to a person, firm, or corporation properly licensed to bottle or package such alcoholic beverages, or a person who has in her or his possession, custody, or control one or more growlers as defined in s. 563.06(7).

(3) A ~~It shall be unlawful for any~~ person may not ~~to~~ transport any cans, jugs, jars, bottles, vessels, or any other type of containers intended to be used to bottle or package alcoholic beverages; however, this subsection does ~~section shall~~ not apply to a ~~any~~ firm or corporation holding a license to manufacture or distribute such alcoholic beverages; a ~~and shall not apply to any~~ person transporting such containers to a ~~any~~ person, firm, or corporation holding a license to manufacture or distribute such alcoholic beverages; or a person transporting one or more growlers as defined in s. 563.06(7).

Section 9. Paragraph (d) of subsection (14) of section

563.022, Florida Statutes, is amended to read:

563.022 Relations between beer distributors and manufacturers.—

(14) MANUFACTURER; PROHIBITED INTERESTS.—

(d) Nothing in the Beverage Law shall be construed to prohibit a manufacturer from shipping products to or between the licensed premises of its breweries without a distributor's license. A manufacturer that holds a valid manufacturer's license may deliver, directly to any licensed vendor, up to 2,000 total kegs per calendar year of malt beverages manufactured by the manufacturer and to which it owns the brand rights, subject to the following requirements:

1. Vehicles used to deliver malt beverages to a licensed vendor must be owned or leased by the manufacturer.

2. A manufacturer of malt beverages that is permitted limited self-distribution pursuant to this paragraph is responsible for payment of applicable excise taxes to the division and applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages manufactured and sold to vendors. The reports shall clearly distinguish between malt beverages self-distributed by the manufacturer and malt beverages sold directly to consumers by the manufacturer pursuant to s. 561.221(2).

3. A manufacturer of malt beverages that is permitted limited self-distribution pursuant to this paragraph may not provide malt beverages to a vendor that is within the exclusive

sales territory of a distributor with whom the manufacturer is under contract.

4. A manufacturer of malt beverages that is permitted limited self-distribution pursuant to this paragraph may only distribute malt beverages brewed by the licensed manufacturer which have not been shipped between manufacturing premises owned by the manufacturer packaged in kegs or barrels containing 1 gallon or more to be sold or offered for sale by vendors at retail.

Section 10. Subsections (1) and (6) of section 563.06, Florida Statutes, are amended, present subsection (7) is renumbered as subsection (8) and amended, and a new subsection (7) is added to that section, to read:

563.06 Malt beverages; imprint on individual container; size of containers; growlers; exemptions.—

(1) ~~On and after October 1, 1959,~~ All taxable malt beverages packaged in individual containers possessed by any person in the state for the purpose of sale or resale in the state, except operators of railroads, sleeping cars, steamships, buses, and airplanes engaged in interstate commerce and licensed under this section, shall have imprinted thereon in clearly legible fashion by any permanent method the word "Florida" or "FL" and no other state name or abbreviation of any state name in not less than 8-point type. The word "Florida" or "FL" shall appear first or last, if imprinted in conjunction with any manufacturer's code. A facsimile of the imprinting and its

location as it will appear on the individual container shall be submitted to the division for approval.

(6) With the exception of growlers as defined in subsection (7), all malt beverages packaged in individual containers sold or offered for sale by vendors at retail in this state shall be in individual containers containing no more than 32 ounces of such malt beverages; ~~provided,~~ however, ~~that~~ nothing contained in this section shall affect malt beverages packaged in bulk, ~~or~~ in kegs, or in barrels or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

(7)(a) As used in the Beverage Law, the term "growler" means a container that holds 32, 64, or 128 ounces in volume that was originally manufactured to hold malt beverages.

(b) A growler may be filled or refilled with:

1. A malt beverage manufactured by a manufacturer that holds a valid manufacturer's license and operates a taproom pursuant to s. 561.221(2)(a), if the manufacturer filling the growler is the same manufacturer that brewed the malt beverage and is filling the growler in the taproom.

2. A malt beverage manufactured by a manufacturer that holds a valid manufacturer's license and a valid vendor's license pursuant to s. 561.221(2)(b) or (3), if the manufacturer filling the growler is the same manufacturer that brewed the malt beverage and is filling the growler pursuant to its vendor's license.

3. A malt beverage manufactured by a manufacturer, if the manufacturer filling the growler holds a valid manufacturer's license pursuant to s. 561.221(2)(b) or (3) and a valid quota license at that location pursuant to ss. 561.20(1) and 565.02(1)(a)-(f).

4. A malt beverage manufactured by a manufacturer and sold by a vendor if:

a. The vendor filling the growler holds a valid quota license at that location pursuant to ss. 561.20(1) and 565.02(1)(a)-(f); or

b. The vendor filling the growler holds a vendor license under s. 563.02(1)(a)-(f) or s. 564.02(1)(a)-(f), obtains at least 80 percent of its annual gross revenue from the sale of malt beverages or wine or both, and does not also hold a manufacturer's license. Such a vendor is required to maintain records that demonstrate compliance with this provision for 3 calendar years.

(c) A growler must have an unbroken seal or be incapable of being immediately consumed.

(d) A growler must be clearly labeled as containing an alcoholic beverage and provide the name of the manufacturer, the brand, the volume, the percentage of alcohol by volume, and the required label information for alcoholic beverages under 27 C.F.R. s. 16.21. If a growler being refilled has an existing label or other identifying mark from a manufacturer or brand, that label shall be covered sufficiently to indicate the

manufacturer and brand of the malt beverage placed in the growler.

(e) A growler must be clean before being filled.

(f) A licensee authorized to fill growlers may not use growlers for purposes of distribution or sale outside of the licensed manufacturing premises or licensed vendor premises.

(8)~~(7)~~ A ~~Any~~ person, firm, or corporation or an agent, officer, or employee thereof who violates~~, its agents, officers or employees, violating any of the provisions of~~ this section commits~~, shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083,~~.~~ and the license, if any, shall be subject to revocation or suspension by the division.

Section 11. Section 563.09, Florida Statutes, is created to read:

563.09 Malt beverage tastings by distributors and manufacturers.—

(1) A manufacturer, distributor, or importer of malt beverages, or any contracted third-party agent thereof, may conduct sampling activities that include the tasting of malt beverage products on:

(a) The licensed premises of a vendor authorized to sell alcoholic beverages by the drink for consumption on premises; or

(b) The licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises if:

1. The licensed premises is at an establishment with at least 10,000 square feet of interior floor space exclusive of storage space not open to the general public; or

2. The licensed premises is a package store licensed under s. 565.02(1)(a).

(2) A malt beverage tasting conducted under this section must be limited to and directed toward the general public of the age of legal consumption.

(3) For a malt beverage tasting conducted under this section on the licensed premises of a vendor authorized to sell alcoholic beverages for consumption on premises, each serving of a malt beverage to be tasted must be provided to the consumer by the drink in a tasting cup, glass, or other open container and may not be provided by the package in an unopened can or bottle or in any other sealed container.

(4) For a malt beverage tasting conducted under this section on the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises, the tasting must be conducted in the interior of the building constituting the vendor's licensed premises and each serving of a malt beverage to be tasted must be provided to the consumer in a tasting cup having a capacity of 3.5 ounces or less.

(5) A manufacturer, distributor, or importer, or any contracted third-party agent thereof, may not pay a vendor, and a vendor may not accept, a fee or compensation of any kind,

including the provision of a malt beverage at no cost or at a reduced cost, to authorize the conduct of a malt beverage tasting under this section.

(6)(a) A manufacturer, distributor, or importer, or any contracted third-party agent thereof, conducting a malt beverage tasting under this section, must provide all of the beverages to be tasted, the total volume of which per tasting may not exceed 576 ounces; must have paid all excise taxes on those beverages which are required of the manufacturer or distributor; and must return to the manufacturer's or distributor's inventory all of the malt beverages provided for the tasting that remain unconsumed after the tasting. More than one tasting may be held on the licensed premises each day, but only one manufacturer, distributor, importer, or contracted third-party agent thereof, may conduct a tasting on the premises at any one time.

(b) Any samples of malt beverages provided to a vendor by a manufacturer, distributor, or importer, or any contracted third-party agent thereof, in conjunction with or at the time of a tasting conducted under this section on the licensed premises of such vendor are subject to the volume limit for such premises set forth under paragraph (a).

(c) This subsection does not preclude a manufacturer, distributor, or importer, or any contracted third-party agent thereof, from buying the malt beverages that it provides for the tasting from a vendor at no more than the retail price, but all of the malt beverages so purchased and provided for the tasting

which remain unconsumed after the tasting must be removed from the premises of the tasting and properly disposed of.

(7) A manufacturer, distributor, or importer of malt beverages that contracts with a third-party agent to conduct a malt beverage tasting under this section on its behalf is responsible for any violation of this section by such agent.

(8) This section does not preclude a vendor from conducting a malt beverage tasting on its licensed premises using malt beverages from its own inventory.

(9) This section is supplemental to and does not supersede any special act or ordinance.

(10) The division may, pursuant to ss. 561.08 and 561.11, adopt rules to implement, administer, and enforce this section.

Section 12. Subsections (1) and (2) of section 565.03, Florida Statutes, are amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; craft distilleries.—

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

(a) "Craft distillery" means a licensed distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises and has notified the division in writing of its decision to qualify as a craft distillery.

(b) "Distillery" means a manufacturer that distills ethyl alcohol or ethanol to create ~~of~~ distilled spirits.

(2)(a) A distillery authorized to do business under the

Beverage Law shall pay an annual state license tax for each plant or branch operating in the state, as follows:

1. If engaged in the business of manufacturing distilled spirits, a state license tax of $4,000.

2. If engaged in the business of rectifying and blending spirituous liquors and nothing else, a state license tax of $4,000.

(b) Persons licensed under this section who are in the business of distilling spirituous liquors may also engage in the business of rectifying and blending spirituous liquors without the payment of an additional license tax.

(c) A craft distillery licensed under this section may sell to consumers, at its souvenir gift shop, spirits distilled on its premises in this state in factory-sealed containers that are filled at the distillery for off-premises consumption. Such sales are authorized only on private property contiguous to the licensed distillery premises in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state. A craft distillery or licensed distillery may not sell any factory-sealed individual containers of spirits except in face-to-face sales transactions with

consumers who are making a purchase of ~~two or fewer~~ individual containers, that comply with the container limits in s. 565.10, ~~per calendar year~~ for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.

1. A craft distillery must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(a). Any retail sales to consumers at the craft distillery's licensed premises are prohibited beginning the day after it reaches the production limitation.

2. A craft distillery may only ship, arrange to ship, or deliver any of its distilled spirits to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distiller licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.

3. Except as provided in subparagraph 4., it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.

4. A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises.

Section 13. Section 565.04, Florida Statutes, is amended to read:

565.04 Package store restrictions.—

(1) Vendors licensed under s. 565.02(1)(a) shall not ~~in said place of business~~ sell, offer, or expose for sale any merchandise other than such beverages~~,~~ in the licensed premises, and the licensed premises ~~such places of business~~ shall be devoted exclusively to such sales; provided, however, that such vendors shall be permitted to sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, and tobacco products. The licensed premises ~~Such places of business~~ shall have no more than one inside entrance ~~openings~~ permitting direct access to any other building or room~~,~~ that is separately licensed under the Beverage Law to the same licensee, provided that the inside entrance has a door that is opened and closed by patrons and a separate outside entrance is provided. The licensed premises may also have a private office or storage room from which patrons are excluded ~~except to a private office or storage room of the place of~~

~~business from which patrons are excluded~~.

(2) Notwithstanding any other provision of law, when distilled spirits are delivered to any area of any licensed vendor's place of business, such distilled spirits may be stored by the vendor and transported by either a distributor or the vendor through any licensed premises that has an inside entrance into a package store licensed to sell distilled spirits.

(3) The act of selling items in a package store that are otherwise not permitted for sale pursuant to subsection (1) is not a violation of subsection (1) if the items are obtained at the connected separately licensed premises through the inside entrance and are not displayed in the licensed package store premises as defined on the diagram defining the licensed premises of such package store.

Section 14. If any provision of s. 561.221(2), Florida Statutes, as amended by this act, is held invalid, or if the application of that subsection to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end s. 561.221(2), Florida Statutes, is severable.

Section 15. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 391 Location of Utilities
SPONSOR(S): Transportation & Economic Development Appropriations Subcommittee; Local Government Affairs Subcommittee; Ingram and other
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/CS/SB 896

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 1 N, As CS	Zaborske	Miller
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N, As CS	Davis	Davis
3) Regulatory Affairs Committee		Keating	Hamon

SUMMARY ANALYSIS

Under common law, a utility is generally obligated to pay for the relocation of its lines and facilities located within property held for the public benefit, absent an agreement providing otherwise. Consistent with common law, Florida statute expressly provides for a utility to bear the costs of relocating its facilities located upon, under, over, or along any public road or publicly owned rail corridor if it "unreasonably interferes in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion" of the public road or publicly owned rail corridor.

The bill revises several statutory provisions related to the placement and relocation of utility facilities. The bill:

- Specifies the circumstances under which a utility must pay to remove or relocate its facilities that unreasonably interfere with the convenient, safe, or continuous use of, or the maintenance, improvement, extension, or expansion of, a public road or publicly owned rail corridor by:
  - Requiring a utility to relocate facilities at its own expense only if the facilities are located *within the right-of-way limits* of a road or rail corridor, rather than *upon, under, over, or along* the road or rail corridor.
  - Requiring a third party to pay for relocation of utility facilities located within the right-of-way limits of a road or rail corridor if relocation is required as a condition or result of the third party's project.
  - Requiring the governing authority to pay for relocation of facilities if the facilities are located within a utility easement granted by recorded plat.
- Requires a governing authority to pay for relocation of utility facilities located within the right-of-way limits of a public road or publicly owned rail corridor if relocation is required for purposes other than removal of an unreasonable interference.
- Limits the authority of a county to grant licenses for utility transmission lines to only those facilities located *within the right-of-way limits* of, rather than *under, on, over, across, and along,* a county highway or public road or highway.
- Limits the authority of the Florida Department of Transportation and local governmental entities to prescribe and enforce reasonable rules or regulations relating to the placement or maintenance of utility facilities to only those facilities located *within the right-of-way limits* of, rather than *along, across, or on* any public road or publicly owned rail corridor, a jurisdictional road or publicly owned rail corridor.
- Prohibits a municipality or county from requiring utilities to resubmit information already in the possession of, or previously provided to, the municipality or county.

The bill has an indeterminate negative fiscal impact on state and local government expenditures (see Fiscal Analysis Section). The bill is effective upon becoming law.

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply. **If the bill does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.**

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public roads, highways, and rail corridors, as well as water, sewer, gas, power, telephone, television, and other utilities, play an essential role in our daily lives. Originally, the streets throughout our country were "laid out for the horse and buggy age" and, with time, they became "too narrow for the present traffic conditions."[1] Over time, streets were expanded to accommodate traffic and, even today, streets require expansion to accommodate evolving traffic needs. Rather than acquiring separate easements from private landowners, government authorities historically have allowed utilities to lay their lines and facilities within public rights-of-way and utility easements. Under current law regarding the platting of real property,[2] every plat offered for recording must include a dedication by all owners of record of the land to be subdivided.[3] Once a plat is recorded in compliance with the statute, all streets, rights-of-way, alleys, easements, and public areas shown on the plat are deemed dedicated for public use, for the uses and purposes thereon stated, unless otherwise stated.[4]

Historically, utilities have been required to pay to relocate lines or facilities located within property held for the public's benefit when relocation is required for a public project. For example, in 1905 the U.S. Supreme Court held that a gas utility company, which had an agreement providing it would make reasonable changes when directed by the City of New Orleans, was not entitled to be compensated for relocating certain lines located within streets and alleys in order for the city to develop a drainage system.[5] Similarly, in 1906 the Florida Supreme Court explained that it is a "rule well settled in the law [that with any] grant to individuals and corporations [of] the privilege of occupying the streets and public ways for lawful purposes, such as railroad tracks, poles, wires, and gas and water pipes, such rights are at all times held in subordination to the superior rights of the public, and all necessary and desirable police ordinances, that are reasonable, may be enacted and enforced to protect the public health, safety, and convenience, notwithstanding the same may interfere with legal franchise rights."[6] Accordingly, in 1935, the U.S. Supreme Court held that a utility, which had purchased a right-of-way for pipes and auxiliary telephone lines, had purchased a private right-of-way, or private easement, which the court held was land subject to compensation by the authority seeking to build a highway across it.[7]

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[1] *Ridgefield Land Co. v. City of Detroit*, 217 N.W. 58, 59 (Mich. 1928).

[2] Current law provides that every plat submitted to the approving agency of a local governing body must be accompanied by a boundary survey of the platted lands, as well as a title opinion of an attorney-at-law licensed in Florida or a certification by an abstractor or a title company, as specified by statute. s. 177.041, F.S. Prior to approval by the appropriate governing body, the plat must be reviewed for conformity to the governing statutes by a professional surveyor and mapper either employed by or under contract to the local governing body, the costs of which must be borne by the legal entity offering the plat for recordation, and evidence of such review must be placed on such plat. s. 177.031(16), F.S.

[3] s. 177.081(3), F.S. As used in chapter 177, F.S., "'[e]asement' means any strip of land created by a subdivider for public or private utilities, drainage, sanitation, or other specified uses having limitations, the title to which shall remain in the name of the property owner, subject to the right of use designated in the reservation of the servitude," s. 177.031(7)(a), F.S., and "'[r]ight-of-way' means land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies," s. 177.031(16), F.S.

[4] *Id.*

[5] *New Orleans Gaslight Co. v. Drainage Comm'n of New Orleans*, 197 U.S. 453, 454 (1905).

[6] *Anderson v. Fuller*, 41 So. 684, 688 (1906).

[7] *Panhandle Eastern Pipe Line Co. v. State Highway Comm'n of Kansas*, 294 U.S. 613 (1935). *See City of Grand Prairie v. Am. Tel & Tel. Co.*, 405 F.2d 1144,1146 (5th Cir. 1969) (holding the common law rule that a utility pay for relocation did not apply where the utility facilities were located within a private easement acquired long prior to planning and laying out and construction of a street). *See Bonner v. Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (the Eleventh Circuit Court of Appeals has adopted all of the decisions of the former Fifth Circuit decided prior to October 1, 1981).

In 1983, the U.S. Supreme Court reaffirmed the common-law principle that a utility forced to relocate from a public right-of-way must do so at its own expense.[8]

In 2014, the Florida Second District Court of Appeal (Second DCA) ruled that the requirement for utilities to pay for relocation within a right-of-way is well established in the common law[9] and, absent another arrangement by agreement between a governmental entity and the utility, or a statute dictating otherwise, this common law principle governs.[10] This case involved a platted public utility easement, six feet or less on each side of the boundary for each home site in the subdivision, in which the electric utility had installed lines and other equipment.[11] The municipality and the utility had a franchise agreement granting the utility the right to operate its electric utility in the public easement, but the agreement did not address who would be responsible for the cost of moving the utility's equipment if the municipality required the utility to do so. The Second DCA held that the utility would bear the cost of moving a utility line located within a public utility easement to another public utility easement as part of the municipality's expansion of an existing road.[12]

Utility Use of Public Lands

Various provisions of Florida law establish the authority of utilities to place their facilities on or beside public property. Chapter 361, F.S., establishes eminent domain rights over public and private property for companies that construct, maintain, or operate public works, such as water, sewer, wastewater reuse, natural gas, and electric utilities.[13] Through eminent domain, a utility acquires the property at issue.

Other provisions of law establish the authority of telecommunications companies to place their facilities along public roads or in the public right-of-way without acquiring the property. For example, s. 362.01, F.S., authorizes any telegraph or telephone company to "erect posts, wires and other fixtures for telegraph or telephone purposes on or beside any public road or highway" provided that this does not "obstruct or interfere with the common uses of said roads and highways." Permission to occupy the streets of an incorporated city or town must be obtained by the city or town council. In addition, s. 610.104, F.S., provides that a cable or video service provider granted a statewide franchise is

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[8] *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tele. Co. of Va.*, 464 U.S. 30, 35 (1983).

[9] *Lee County Electric Coop., Inc. v. City of Cape Coral*, No. 2D10-3781, 2014 WL 2218972, at *4 (Fla. 2d DCA May 23, 2014), *cert. denied*, 151 So. 3d 1226 (Fla. 2014), quoting *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tel. Co. of Va.*, 464 U.S. 30, 35 (1983).

[10] *Lee County Electric Coop., Inc. v. City of Cape Coral*, No. 2D10-3781, 2014 WL 2218972, at *4 (Fla. 2d DCA May 23, 2014).

[11] "A right-of-way is not the same thing as an easement. The term 'right-of-way' has been construed to mean ... a right of passage over the land of another.... It does not necessarily mean a legal and enforceable incorporeal [or intangible] right such as an easement." *City of Miami Beach v. Carner*, 579 So. 2d 248, 253 (Fla. 3d DCA 1991) (citation & internal quotation marks omitted). An easement gives someone else a reserved right to use property in a specified manner. *Se. Seminole Civic Ass'n v. Adkins*, 604 So. 2d 523, 527 (Fla. 5th DCA 1992) ("[E]asements are mere rights to make certain limited use of lands and at common law, they did not have, and in the absence of contractual provisions, do not have, obligations corollary to the easement rights."). An easement "does not involve title to or an estate in the land itself." *Estate of Johnston v. TPE Hotels, Inc.*, 719 So. 2d 22, 26 (Fla. 5th DCA 1998) (citations omitted).

[12] *Id.* In reaching this conclusion, the Second DCA distinguished *Panhandle E. Pipe Line Co.*, noting that case concerned "a private easement the utility purchased from a property owner, rather than pursuant to a franchise agreement that allows the utility to use public property." *Lee County Electric Coop., Inc.*, 2014 WL 2218972, at *3. The Second DCA in its opinion also distinguished an earlier Second DCA case, *Pinellas County v. General Tel. Co. of Fla.*, 229 So. 2d 9 (Fla. 2d DCA 1969). In *Pinellas County*, without citing or discussing relevant cases or statutes, the court determined that the utility, which had a franchise agreement with the City, had a property right in the agreement, and held that the County had to pay the utility's costs in moving its telephone lines located within a right-of-way of an alley dedicated to the City and which was within property the County was purchasing as part of a County building construction.

[13] Telegraph and telephone companies are granted eminent domain powers to construct, maintain, and operate their lines along and upon the railroad right-of-way, provided that it does not interfere with the ordinary use of the railroad. s. 362.02, F.S.

authorized to "construct, maintain, and operate facilities through, upon, over, and under any public right-of-way ... subject to the applicable governmental permitting."

Statutory Responsibility for Cost of Removal or Relocation of Utility Facilities

Since 1957, Florida law expressly has provided that in the event of widening, repair, or reconstruction of a county's public road or highway,[14] the licensee must move or remove the lines at no cost to the county.[15] In 2009, that requirement was made subject to a provision in s. 337.403(1), F.S., relating to agreements entered into after July 1, 2009.[16] In 2014, it was made subject to an additional requirement that the county find the utility is "unreasonably interfering" with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor.[17]

Additionally, beginning in 1957, Florida statutorily required utilities to bear the costs of relocating a utility placed upon, under, over, or along any public road[18] that an authority[19] finds unreasonably interferes in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of the road.[20] In 1994, that law was amended to include utilities placed upon, under, over, or along any publicly owned rail corridor.[21] Current law requires utility owners, upon 30 days' notice, to eliminate the unreasonable interference within a reasonable time or an agreed time, at their own expense.[22] However, since 1987, numerous exceptions to the general rule that the utility bear the costs under these circumstances have been statutorily carved out.[23]

- In 1987, exceptions were made providing:
  - When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, DOT pays for the removal or relocation with federal funds.[24]
  - When utility work is performed as part of a transportation facility construction contract, DOT may participate in those costs in an amount limited to the difference between the official estimate of all the work in the agreement plus 10 percent of the amount awarded for the utility work in the construction contract.[25]

- In 1999, an exception was made providing:
  - When utility work is performed in advance of a construction contract, DOT may participate in the cost of clearing and grubbing necessary for relocation.[26]

- In 2009, exceptions were made providing:
  - If the utility being removed or relocated was initially installed to serve an authority or its tenants, or both, the authority bears the cost of the utility work but is not responsible for the cost of

[14] In this context, "road" means "a way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel and all ferries used in connection therewith." s. 334.03(22), F.S.
[15] ch. 57-777, s. 1, Laws of Fla., now codified at s. 125.42(5), F.S.
[16] ch. 2009-85, s. 2, Laws of Fla., now codified at s. 125.42(5), F.S.
[17] ch. 2014-169, s. 1, Laws of Fla., now codified at s. 125.42, F.S.
[18] See definition of "road" in footnote 13.
[19] "[A]uthority" means DOT and local governmental entities. s. 337.401(1), F.S.
[20] ch. 57-1978, s. 1, Laws of Fla., now codified at s. 337.403, F.S.
[21] ch. 1994-247, s. 28, Laws of Fla., now codified at s. 337.403, F.S.
[22] s. 337.403, F.S.
[23] s. 337.403(1)(a)-(i), F.S.
[24] ch. 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(a), F.S.
[25] ch. 1987-100, s. 12, Laws of Fla., now codified at s. 337.403(1)(b), F.S.
[26] ch. 1999-385, s. 25, Laws of Fla., now codified at s. 337.403(1)(c), F.S.

removal or relocation of any subsequent additions to the facility for the purpose of serving others.[27]
  - If, in an agreement between the utility and an authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation the authority bears the cost of the utility work, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009.[28]
  - If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past five years, DOT bears the cost of the necessary utility work.[29]

- In 2012, an exception was made providing:
  - An authority may bear the cost of utility work when the utility is not able to establish a compensable property right in the property where the utility is located:
    - If the utility was physically located on the particular property before the authority acquired rights in the property,
    - The information available to the authority does not establish the relative priorities of the authority's and the utility's interest in the property, and
    - The utility demonstrates that it has a compensable property right in all adjacent properties along the alignment of the utility[30] or, pursuant to a 2014 amendment, after due diligence, the utility certifies that it does not have evidence to prove or disprove it has a compensable property right in the particular property where the utility is located.[31]

- Additionally, in 2014, exceptions were made providing:
  - If a municipally-owned or county-owned utility is located in a rural area of critical economic concern[32] and DOT determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by a DOT project on the State Highway System, DOT may pay, in whole or in part, the cost of such utility work performed by DOT or its contractor.
  - If the relocation of utility facilities is needed for the construction of a commuter rail service project or an intercity passenger rail service project, and the cost of the project is reimbursable by the Federal Government, then the utility that owns or operates the facilities located by permit on a DOT owned rail corridor shall perform all necessary utility relocation work after notice from DOT, and DOT must pay the expense for the utility relocation work in the same proportion as Federal funds are expended on the rail project after deducting any increase in the value of a new facility and any salvage value derived from an old facility.[33]

Also, in 2014, the Legislature clarified the 2009 exception that requires an authority to bear the costs to relocate a utility facility that was initially installed to exclusively serve the authority or its tenants. Under this clarification, if the utility facility was installed in the right-of-way to serve a county or municipal

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[27] ch. 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(d), F.S.
[28] ch. 2009-85, s. 10, Laws of Fla., now codified at s. 337.403(1)(e), F.S.
[29] ch. 2009-85, s.10, Laws of Fla., now codified at s. 337.403(1)(f), F.S.
[30] ch. 2012-174, s. 35, Laws of Fla., now codified at s. 337.403(1)(g), F.S.
[31] ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(g)2., F.S.
[32] Section 288.0656(2)(d) defines "rural area of critical economic concern" as "a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact."
[33] ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(i), F.S. The exception expressly provides that in no event is the state required to use state dollars for such utility relocation work and that it does not apply to any phase of the Central Florida Rail Corridor project known as SunRail. S. 337.403(1)(i), F.S.

facility on property adjacent to the right-of-way and the county or municipal facility is intended to be used for purposes other than transportation purposes, the county or municipality is obligated to pay only for the utility work done outside the right-of-way.[34]

Florida statutory law is silent as to cost responsibility for relocation of utility facilities located on or along public roads or rights-of-way in circumstances other than those identified above. The U.S. Supreme Court, in reaffirming the common-law principle related to cost responsibility for utility relocation, has noted that "[i]t is a well-established principle of statutory construction that '[t]he common law ... ought not to be deemed repealed, unless the language of a statute be clear and explicit for this purpose.'"[35] Thus, in circumstances not explicitly addressed in Florida statutory law, the courts may apply the common law principle requiring a utility to pay for relocation of its facilities as required by a governmental authority, absent an agreement otherwise or the presence of a private utility easement.

Specific Grant of Authority to Counties to Issue Licenses to Utilities

Section 125.42, F.S., gives counties the specific authority to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove, within the unincorporated areas of a county, water, sewage, gas, power, telephone, other utility, and television transmission lines located under, on, over, across and along any county roads or highways.[36] The "under, on, over, across and along" county roads or highway language has been in the statute since 1947.[37]

Specific Grant of Authority to Regulate the Placement and Maintenance of Utility Facilities

Chapter 337, F.S., relates to public contracts and the acquisition, disposal, and use of property.[38] In relation to the placement and maintenance of utility facilities along, across, or on any public road or publicly owned rail corridor, current law authorizes the Florida Department of Transportation (DOT) and local governmental entities[39] to prescribe and enforce reasonable rules or regulations.[40] "Utility" in this context means any electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures the statute refers to as a "utility."[41] Florida local governments have enacted ordinances regulating utilities located within city rights-of-way or easements.[42]

Effect of Proposed Changes

The bill revises several statutory provisions related to the placement and relocation of utility facilities. In general, the bill changes references to utility facilities located *on, under, over, across,* or *along* public roads and publicly owned rail corridors to utility facilities located *within the right-of-way limits of* such roads and rail corridors. These changes specify the circumstances under which a utility must pay to remove or relocate its facilities (s. 337.403, F.S.), limit the authority of a county to grant licenses for utility transmission lines (s. 125.42, F.S.), and limit the authority of DOT and local governmental entities to prescribe and enforce rules or regulations relating to the placement or maintenance of utility facilities (s. 337.401, F.S.).

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[34] ch. 2014-169, s. 5, Laws of Fla., now codified at s. 337.403(1)(d), F.S.
[35] *Norfolk Redevelopment & Hous. Auth.*, 464 U.S. at, 35 (1983), quoting *Fairfax's Devisee v. Hunter's Lessee,* 11 U.S. (7 Cranch) 603, 623, 3 L. Ed. 453 (1812).
[36] s. 125.42, F.S.
[37] ch. 23850, ss. 1-3, Laws of Fla., now codified at s. 125.42, F.S.
[38] ss. 337.015 - 337.409, F.S.
[39] These are referred in ss. 337.401-337.404, F.S., as an "authority." s. 337.401(1)(a), F.S.
[40] s. 337.401, F.S.,
[41] s. 337.401(1)(a), F.S.
[42] *See* City of Cape Coral Code of Ordinances, Ch. 25; City of Jacksonville Code of Ordinances, Title XXI, Ch. 711; City of Orlando Code of Ordinances, Ch. 23.

In *Lee County Electric Cooperative, Inc. v. City of Cape Coral*, the Florida Second DCA interpreted the term "along" in s. 337.403, F.S., in determining who would bear the burden of the cost of moving a utility line.[43] The interpretation of "along," as that term as used in s. 337.403, F.S., informs its similar use in ss. 125.42 and 337.401, F.S.[44] The Second DCA determined that s. 337.403, F.S., codified common law and, applying the statute, the utility was responsible for bearing the costs of relocation.[45] The court did not find any "cases interpreting the 'along' the road portion of the statute," but determined the statutory language was clear, holding that "[t]he utility lines at issue . . . were located 'along' the road and they were 'interfering' with the City's 'expansion' of the road."[46]

Statutory Responsibility for Cost of Removal or Relocation of Utility Facilities

First, the bill limits a utility's responsibility to pay for the removal or relocation of its facilities that unreasonably interfere with the convenient, safe, or continuous use of, or the maintenance, improvement, extension, or expansion of, a public road or publicly owned rail corridor to only those facilities located *within the right-of-way limits of* the road or rail corridor rather than *upon, under, over, or along* the road or rail corridor. By eliminating the reference to facilities "along" a pubic road or publicly owned rail corridor, this provision removes the precedential effect of the *Lee County* case on facilities similarly located in public utility easements along a road or rail corridor but outside the right-of-way. Thus, the bill appears to shift cost responsibility in these instances to the governmental authority.

Second, the bill expressly requires DOT or the local government authority to pay for the relocation of facilities located *within the right-of-way* limits of a public road or publicly owned rail corridor if relocation is required for purposes *other than* removal of an unreasonable interference with the convenient, safe, or continuous use of, or the maintenance, improvement, extension, or expansion of, the road or rail corridor. As previously noted, current Florida statutory law is silent as to cost responsibility for relocation of utility facilities for relocation of utility facilities located on or along public roads or rights-of-way in circumstances other than those specifically identified in statute. In these circumstances, under U.S. Supreme Court precedent,[47] courts may apply the common law principle requiring a utility to pay for relocation of its facilities, absent an agreement otherwise or the presence of a private utility easement. Thus, the bill appears to broadly shift the utility's common law cost responsibility to the governmental authority in circumstances in which utility relocation from the right-of-way is required for any purpose not expressly addressed in Florida statutory law. Such purposes appear to include, but are not limited to, municipal utility projects such as water, wastewater, stormwater, electric, and natural gas utility projects and other non-transportation projects, both within and outside the right-of-way, that require work within the right-of-way.

Based on discussions with utility and local government representatives, the practical impact of this provision is not entirely clear. Utility representatives assert that local government authorities, under current law, routinely pay to relocate utility facilities from the right-of-way for projects not related to maintenance, improvement, extension, or expansion of the road. Local government representatives assert that this is not always this case. Further, it appears that cost responsibility for at least some projects is negotiated on a case-by-case basis. In sum, it is difficult to identify a clear and consistent prior practice upon which to determine the full, practical impact of this provision. Regardless, to the extent that these circumstances were previously resolved through negotiation, this provision of the bill shifts the dynamic away from such resolutions.

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[43] *Lee County Electric Coop., Inc. v. City of Cape Coral*, No. 2D10-3781, 2014 WL 2218972 (Fla. 2d DCA May 23, 2014), *cert. denied*, 151 So. 3d 1226 (Fla. 2014).

[44] "When a court interprets a statute, it is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole [and], whenever possible, . . . give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." *Almerico v. RLI Ins.*, 716 So. 2d 774, 779, n.7 (Fla. 1998) (citations & internal quotation marks omitted).

[45] *Id.* at Part II of the opinion.

[46] *Id.*.

[47] See footnote 34, *supra*.

Third, the bill requires DOT or the local government authority to pay for relocation of facilities that unreasonably interfere with the convenient, safe, or continuous use of, or the maintenance, improvement, extension, or expansion of, a public road or publicly owned rail corridor if the facilities are located within a utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the authority by dedication, transfer of fee, or otherwise.[48] This provision appears to directly address the factual scenario presented in the *Lee County* case, thus removing the precedential effect of that case on facilities similarly located in public utility easements granted by recorded plat. Thus, the bill appears to shift cost responsibility in these instances to the governmental authority.

The bill also provides that if relocation of facilities located within the right-of-way limits of a public road or publicly owned rail corridor is required as a condition or result of a project by an entity other than DOT or the local government authority, the other entity must bear the cost of relocation.

Specific Grant of Authority to Counties to Issue Licenses to Utilities

The bill provides that the authority of a county to grant a license to construct, maintain, repair, operate, or remove, within the unincorporated areas of the county, lines for the transmission of water, sewage, gas, power, telephone, other utility, television lines, and other communications services[49] is limited to those lines located *within the right-of-way limits* of any county roads or highways.[50] Accordingly, this change removes a county's authority to grant licenses for such lines running along a road or highway, but not within the actual right of way, which may include a public utility easement.

Specific Grant of Authority to Regulate the Placement and Maintenance of Utility Facilities

The bill narrows the authority of FDOT and local governmental entities to prescribe and enforce reasonable rules or regulations in relation to the placing and maintaining of electric transmission, telephone, telegraph, or other communication services lines; pole lines; poles; railways; ditches; sewers; water, heat or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to as a utility, to the placement or maintenance of such utilities only *within the right-of-way limits* of any public road or publicly owned rail corridors.[51] By changing the language to "right-of-way," the bill removes the authority of FDOT and local governments to prescribe and enforce reasonable rules and regulations regarding the placement and maintenance of the foregoing utilities along a public road or rail corridor, which may include a public utility easement. The bill also changes the expression "other structures referred to as a utility" to mean those structures referred to in ss. 337.401-337.404, F.S.[52]

Information Required by Municipalities and Counties

The bill provides that a municipality or county, in exercising its general authority over a utility, may not require a utility to resubmit information already in the possession of the municipality or county. The bill separately provides that a municipality or county in exercising its authority to regulate providers of communication services[53] may not require a provider to resubmit information the municipality or county

[48] The bill states that the new exception does not impair or restrict, and may not be used to interpret, the terms of any lawful agreement between the authority and a utility owner entered into before the effective date of the act.
[49] The bill adds "other communications services" to the list of utilities in current law.
[50] s. 125.42(1), F.S.
[51] Current law references placement and maintenance "along, across, or on" any road or publicly owned rail corridors, rather than the "right-of-way of" any road or publicly owned rail corridors. s. 337.401(1)(a), F.S.
[52] Current law includes only those other structures referred to in s. 337.401, F.S., as a "utility," which includes "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps." s. 337.401(1)(a), F.S.
[53] s. 337.401, F.S

already has in its possession or was previously provided.[54] The bill does not require any written response to such a request from a communication services provider referencing the previously-provided information.

B. SECTION DIRECTORY:

Section 1. Amends s. 125.42, F.S., relating to water, sewage, gas, power, telephone, other utility and television line licenses.

Section 2. Amends s. 337.401, F.S., relating to rules or regulations concerning specified structures within public roads or rail corridors.

Section 3. Amends s. 337.403, F.S., relating to alleviating interference a utility causes to a public road or publicly owned rail corridor.

Section 4. Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. In its analysis of the bill, the Florida Department of Transportation (DOT) states that the bill has an indeterminate negative fiscal impact on State expenditures relating to the cost of utility relocation on state roads.[55] To the extent funds are used for such relocations, projects could be adjusted within the confines of the Work Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. In its analysis, DOT indicates that the bill has an indeterminate negative fiscal impact on local government expenditures based on the number of situations in which it will be responsible for utility relocation costs.[56] Staff requested data from representatives of local governments regarding the bill's fiscal impact. The City of Cape Coral submitted data showing the cost of moving two utilities as part of three road projects is over $4 million.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. With respect to relocation of facilities located in utility easements that are along but not within the right-of-way, the bill appears to reduce utilities' cost responsibility as specified in the Florida Second DCA's decision in *Lee County*. With respect to relocation of facilities located within the right-of-

[54] The term "information" is not defined. Consequently, this provision could be difficult to implement because the term "information" includes knowledge, not just documents, and includes information contained in documents in the local government's possession but not necessarily compiled in a way that makes the information usable for the purpose of
[55] Florida Department of Transportation, Agency Analysis of 2015 House Bill 391 (updated April 7, 2015).
[56] *Id.*

way for purposes other than those currently specified in statute, at the request of an authority, the bill appears to reduce utilities' cost responsibility under common law.

Utility representatives assert that the bill conforms the law to practice prior to the *Lee County* decision, thus protecting them from costs previously borne by local governments. Local government representatives assert that this prior practice was not consistent. It appears that cost responsibility for at least some projects is negotiated on a case-by-case basis. Staff has requested and received information from both utility and local government representatives but, based on these limited circumstances, cannot fairly identify a clear and consistent prior practice with respect to payment for relocation of utility facilities in the various circumstances addressed by the bill. Regardless, to the extent that these circumstances were previously resolved through negotiation, the bill shifts the dynamic away from such resolutions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because utilities currently are located, or in the future may be located, within utility easements, and an authority would be required to pay for moving or relocating the utility if it is located within said easement and not within a right-of-way for any public road or publicly owned rail corridors. However, an exception may apply because the bill appears to apply to all persons similarly situated, including the state and local governments.

If the bill does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

To the extent DOT has any rules affected by this legislation, it may need to amend those rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits municipalities or counties from requiring that utilities resubmit information previously provided to local governments or authorities, but does not define the term "information." It is unclear whether the bill pertains only to written documentation or to all forms of information, which may make compliance uncertain.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Local Government Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment conforms the bill to its Senate companion, SB 896, but includes additional language prohibiting a municipality, county, or other governmental authority from requesting information already submitted by a utility provider.

On March 12, 2015, the Transportation & Economic Development Appropriations Subcommittee adopted one amendment which removed duplicative uses of the term "authority" from the bill. The bill was reported favorably as a committee substitute.

This analysis addresses the committee substitute passed by the Transportation & Economic Development Appropriations Subcommittee.

A bill to be entitled

An act relating to the location of utilities; amending s. 125.42, F.S.; authorizing a board of county commissioners to grant a license to work on or operate specified utility, television, or other communications services lines within the right-of-way limits of certain county or public highways or roads; conforming a cross-reference; amending s. 337.401, F.S.; specifying that the Department of Transportation and certain local governmental entities may prescribe and enforce rules or regulations regarding the placement and maintenance of specified structures and lines within the right-of-ways of roads or publicly owned rail corridors under their respective jurisdictions; prohibiting a municipality or county from requiring a utility or a provider of communications services to resubmit information already in the possession of the respective entity; amending s. 337.403, F.S.; specifying that a utility located within certain right-of-way limits must initiate and pay for the work necessary to alleviate any interference to the use of certain public roads or rail corridors; requiring an authority to pay the cost of requiring the relocation of a utility, under certain circumstances; requiring an entity other than the authority to pay the cost of certain relocations of utilities under certain

circumstances; requiring an authority to pay the cost of utility work required to eliminate unreasonable interference within certain existing utility easements; providing an effective date.

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

Section 1. Section 125.42, Florida Statutes, is amended to read:

125.42 Water, sewage, gas, power, telephone, other utility, and television lines within the right-of-way limits of ~~along~~ county roads and highways.—

(1) The board of county commissioners, with respect to property located without the corporate limits of any municipality, is authorized to grant a license to any person or private corporation to construct, maintain, repair, operate, and remove lines for the transmission of water, sewage, gas, power, telephone, other public utilities, ~~and~~ television, or other communications services within the right-of-way limits of ~~under, on, over, across and along~~ any county highway or any public road or highway acquired by the county or public by purchase, gift, devise, dedication, or prescription. However, the board of county commissioners shall include in any instrument granting such license adequate provisions:

(a) To prevent the creation of any obstructions or conditions which are or may become dangerous to the traveling

public;

(b) To require the licensee to repair any damage or injury to the road or highway by reason of the exercise of the privileges granted in any instrument creating such license and to repair the road or highway promptly, restoring it to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury;

(c) Whereby the licensee shall hold the board of county commissioners and members thereof harmless from the payment of any compensation or damages resulting from the exercise of the privileges granted in any instrument creating the license; and

(d) As may be reasonably necessary, for the protection of the county and the public.

(2) A license may be granted in perpetuity or for a term of years, subject, however, to termination by the licensor, in the event the road or highway is closed, abandoned, vacated, discontinued, or reconstructed.

(3) The board of county commissioners is authorized to grant exclusive or nonexclusive licenses for the purposes stated herein for television.

(4) This law is intended to provide an additional method for the granting of licenses and shall not be construed to repeal any law now in effect relating to the same subject.

(5) In the event of widening, repair, or reconstruction of any such road, the licensee shall move or remove such water, sewage, gas, power, telephone, and other utility lines and

television lines at no cost to the county should they be found by the county to be unreasonably interfering, except as provided in s. 337.403(1)(d)-(j) ~~s. 337.403(1)(d)-(i)~~.

Section 2. Paragraph (a) of subsection (1), subsection (2), and paragraph (b) of subsection (3) of section 337.401, Florida Statutes, are amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1)(a) The department and local governmental entities, referred to in this section and ss. 337.402, 337.403, and 337.404 ~~ss. 337.401-337.404~~ as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining within the right-of-way limits of ~~along, across, or on~~ any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and ss. 337.402, 337.403, and 337.404 as the "utility." The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the

permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

(2) The authority may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority. However, for public roads or publicly owned rail corridors under the jurisdiction of the department, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit. The permit shall require the permitholder to be responsible for any damage resulting from the issuance of such permit. In exercising its authority over a utility, a municipality or county may not require a utility to resubmit information already in the possession of the municipality or county. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto.

(3)

(b) Registration described in paragraph (a) does not establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in roads or rights-of-way of a municipality or county. Each municipality and county retains the authority to regulate and manage

municipal and county roads or rights-of-way in exercising its police power. Any rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by providers of communications services must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality or county. In exercising its authority over providers of communications services under this section, a municipality or county may not require a provider of communications services to resubmit information already in the possession of the municipality or county or previously provided to the municipality or county.

Section 3. Subsection (1) of section 337.403, Florida Statutes, is amended to read:

337.403 Interference caused by utility; expenses.—

(1) If a utility that is within the right-of-way limits of ~~placed upon, under, over, or along~~ any public road or publicly owned rail corridor is found by the authority to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor, the utility owner shall, upon 30 days' written notice to the utility or its agent by the authority, initiate the work necessary to alleviate the interference at its own expense except as provided in paragraphs (a)-(j) ~~(a)-(i)~~. The work must be completed within

such reasonable time as stated in the notice or such time as agreed to by the authority and the utility owner. If an authority requires the relocation of a utility for purposes not described in this subsection, the authority shall bear the cost of relocating the utility. If the relocation is required as a condition or result of a project by an entity other than an authority, the other entity shall bear the cost of relocating the utility.

(a) If the relocation of utility facilities, as referred to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, is necessitated by the construction of a project on the federal-aid interstate system, including extensions thereof within urban areas, and the cost of the project is eligible and approved for reimbursement by the Federal Government to the extent of 90 percent or more under the Federal Aid Highway Act, or any amendment thereof, ~~then in that event~~ the utility owning or operating such facilities shall perform any necessary work upon notice from the department, and the state shall pay the entire expense properly attributable to such work after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility.

(b) When a joint agreement between the department and the utility is executed for utility work to be accomplished as part of a contract for construction of a transportation facility, the department may participate in those utility work costs that exceed the department's official estimate of the cost of the

work by more than 10 percent. The amount of such participation is limited to the difference between the official estimate of all the work in the joint agreement plus 10 percent and the amount awarded for this work in the construction contract for such work. The department may not participate in any utility work costs that occur as a result of changes or additions during the course of the contract.

(c) When an agreement between the department and utility is executed for utility work to be accomplished in advance of a contract for construction of a transportation facility, the department may participate in the cost of clearing and grubbing necessary to perform such work.

(d) If the utility facility was initially installed to exclusively serve the authority or its tenants, or both, the authority shall bear the costs of the utility work. However, the authority is not responsible for the cost of utility work related to any subsequent additions to that facility for the purpose of serving others. For a county or municipality, if such utility facility was installed in the right-of-way as a means to serve a county or municipal facility on a parcel of property adjacent to the right-of-way and if the intended use of the county or municipal facility is for a use other than transportation purposes, the obligation of the county or municipality to bear the costs of the utility work shall extend only to utility work on the parcel of property on which the facility of the county or municipality originally served by the

utility facility is located.

(e) If, under an agreement between a utility and the authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority, without the agreement expressly addressing future responsibility for the cost of necessary utility work, the authority shall bear the cost of removal or relocation. This paragraph does not impair or restrict, and may not be used to interpret, the terms of any such agreement entered into before July 1, 2009.

(f) If the utility is an electric facility being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and in which ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past 5 years, the department shall incur all costs of the necessary utility work.

(g) An authority may bear the costs of utility work required to eliminate an unreasonable interference when the utility is not able to establish that it has a compensable property right in the particular property where the utility is located if:

1. The utility was physically located on the particular property before the authority acquired rights in the property;

2. The utility demonstrates that it has a compensable property right in adjacent properties along the alignment of the

utility or, after due diligence, certifies that the utility does not have evidence to prove or disprove that it has a compensable property right in the particular property where the utility is located; and

3. The information available to the authority does not establish the relative priorities of the authority's and the utility's interests in the particular property.

(h) If a municipally owned utility or county-owned utility is located in a rural area of critical economic concern, as defined in s. 288.0656(2), and the department determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by a department project on the State Highway System, the department may pay, in whole or in part, the cost of such utility work performed by the department or its contractor.

(i) If the relocation of utility facilities is necessitated by the construction of a commuter rail service project or an intercity passenger rail service project and the cost of the project is eligible and approved for reimbursement by the Federal Government, then in that event the utility owning or operating such facilities located by permit on a department-owned rail corridor shall perform any necessary utility relocation work upon notice from the department, and the department shall pay the expense properly attributable to such utility relocation work in the same proportion as federal funds are expended on the commuter rail service project or an

intercity passenger rail service project after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility. In no event shall the state be required to use state dollars for such utility relocation work. This paragraph does not apply to any phase of the Central Florida Commuter Rail project, known as SunRail.

(j) If a utility is located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the authority by dedication, transfer of fee, or otherwise, the authority shall bear the cost of the utility work required to eliminate an unreasonable interference.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 405 Regulation of Not-for-profit Self-insurance Funds
SPONSOR(S): Government Operations Appropriations Subcommittee; La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N	Lloyd	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

In general, self-insurance is the assumption of financial risk oneself, rather than paying an insurance company to assume it. Florida law recognizes many different types of self-insurance funds. Two or more corporations not for profit can form a self-insurance fund (fund) to share their property or casualty risks. There are specified requirements and parameters for such a fund and its members. One requirement is that a fund member must receive at least 75 percent of its revenue from local, state, or federal government sources.

There is one such fund in the state, though others may be formed at any time, if formed in compliance with the law. This fund has approximately 150 members. It relies on the member's federal tax returns to determine whether the members meet the governmental revenue threshold. The fund offers: Property General Liability; Professional Liability; Medical Practice Liability; Medical Legal Liability; Directors & Officers Liability; Workers' Compensation; Commercial Automobile; and, Employee Health Benefits.

Members of such a fund are also typically federally tax-exempt organizations. An entity must be determined by the Internal Revenue Service (IRS) to be a tax-exempt organization following the filing of an IRS application form prior to filing its returns as a tax-exempt organization. Most federally tax-exempt organizations must file Form 990 with the IRS. Whether an organization is a publically supported organization is determined using Schedule A to IRS Form 990 or 990EZ. Schedule A requires organizations to indicate the reason the organization is a "public charity" for the tax year, which may be dependent upon public support. The available reasons on Schedule A include organizations that normally receive a substantial part of its support from a governmental unit *or* from the general public. Presently, only governmental support is considered in regard to revenue for qualification to form a fund.

The bill expands the types of corporations not for profit qualifying for membership in a fund. Specifically, the bill allows a corporation not for profit that is a publically supported organization for IRS purposes due to receipt of 75 percent of its revenue from the general public to be a member of a fund. This federal tax return based test is presented as an alternative to qualifying under the standard requirement that 75 percent of the corporation's revenue come from governmental sources (which is retained in the law).

The bill establishes a requirement that publicly supported organizations qualifying for fund membership must maintain sufficient surplus at the 70 percent confidence level, as determined by a qualified actuary. In addition, the bill requires the fund to file with the Office of Insurance Regulation (OIR) a remedial plan addressing the financial condition of the fund if they do not maintain the 70 percent confidence level. The remedial plan is subject to determination by the OIR that the fund will operate on an actuarially sound basis and the fund does not pose a significant risk of insolvency. The bill specifies that funds operating before the effective date of the bill shall have until July 1, 2020, to comply with the actuarial confidence requirements.

Finally the bill requires that this type of fund maintain excess insurance with a reinsurer holding a rating of A- or higher from a statistical rating organization deemed acceptable by the commissioner of the OIR.

The Revenue Estimating Impact Conference determined that the bill has an insignificant negative fiscal impact to insurance premium tax revenues. The bill is expected to have no impact on local government and an undetermined positive impact on the private sector.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In general, self-insurance is the assumption of some or all insurance-related financial risk oneself, rather than paying an insurance company to assume it.[1] Florida law recognizes many different types of self-insurance funds.[2] Two or more corporations not for profit[3] wanting to pool their property or casualty risks together can form a self-insurance fund under s. 624.4625, F.S.[4] This statute outlines many requirements and parameters for the fund and the corporation not for profit members. One requirement set out is that each fund member receives at least 75 percent of its revenue from local, state, or federal government sources.

There is at least one corporation not for profit self-insurance fund in Florida, the Florida Insurance Trust (FIT). It has approximately 150 members.[5] The FIT currently offers multiple lines of coverage in their self-insurance fund.[6] According to the FIT, Form 990[7] from the Internal Revenue Service (IRS) is the source the FIT uses to determine if potential members receive 75 percent of funding from governmental sources. In addition, most current members of the FIT indicate on Schedule A for Form 990 that they are an organization that normally receives a substantial part of its support from a governmental unit or from the general public and qualify as a publically supported organization for IRS purposes.

Members of such a fund are also typically federally tax-exempt organizations. An entity must be determined by the IRS to be a tax-exempt organization following the filing of an IRS application form[8] prior to filing its returns as a tax-exempt organization. Most federally tax-exempt organizations must file Form 990 with the IRS. Schedule A to Form 990 or 990EZ requires organizations to indicate the reason the organization is a "public charity" for the tax year, which may hinge upon public support. The determination whether a public charity is also a publically supported organization for IRS purposes is determined by the results of a computation of public support percentage set out on Schedule A.[9] The computation takes into account certain receipts of the public charity for the past five years. Specifically, Schedule A requires organizations to disclose their aggregate receipts from the past five years from gifts; grants; contributions; membership fees; tax revenue; services or facilities furnished to the organization from a governmental unit; gross income from interest, dividends, payments received on securities loans, rents, royalties and income from other sources; net income from unrelated business activities; and other income. The amount of these receipts for certain tax years is used in the computation of a public support percentage, the result of which determines whether the organization qualifies as a publically supported organization for IRS purposes.[10]

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[1] Glossary, http://www.iii.org/services/glossary (last viewed March 10, 2015).
[2] See s. 624.462, F.S., relating to commercial self-insurance funds; s. 624.4621, F.S., relating to group self-insurance funds; s. 624.4622, F.S., relating to local government self-insurance funds; s. 624.46226, F.S., relating to public housing authorities self-insurance funds; s. 624.4623, F.S., relating to independent nonprofit colleges or universities self-insurance fund; and s. 624.4626, relating to electric cooperative self-insurance fund.
[3] Corporations not for profit are organized under Chapter 617, F.S. A corporation not for profit "means a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under [ch. 617]." s. 617.01401(5), F.S.
[4] The Office of Insurance Regulation reports that there is only one fund operating under s. 624.4625, F.S. (agency bill analysis on file with the Insurance and Banking Subcommittee).
[5] http://floridainsurancetrust.com/index.php (last viewed March 10, 2015). The FIT has been in existence since 2007.
[6] The FIT offers: Property General Liability; Professional Liability; Medical Practice Liability; Medical Legal Liability; Directors & Officers Liability; Workers' Compensation; Commercial Automobile; and, Employee Health Benefits. See http://floridainsurancetrust.com/coverage.html (last viewed on March 10, 2015).
[7] Non-profits whose incomes were less than $500,000 and their assets less than $1.25 million can file a Form 990EZ.
[8] Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.*
[9] There are two ways an organization can qualify as a publically supported one: the 33 1/3 support test and the 10 percent facts and circumstances test. Calculations for both tests are set forth on Schedule A, Form 990 or Form 990EZ).
[10] Schedule A (Form 990 or 990-EZ and Instructions for Schedule A available at http://www.irs.gov/uac/About-Schedule-A-(Form-990-or-990EZ) (last viewed on March 10, 2015).

The bill maintains current law allowing membership for corporations not for profit that receive at least 75 percent of their revenue from local, state, or federal government sources. By retaining current law in this regard, all current members of corporation not for profit self-insurance funds are essentially grandfathered in and thus, will be able to continue to qualify for fund membership, as long as their governmental funding level does not fall below 75 percent.

Presently, a member qualifies for a corporation not for profit self-insurance fund by drawing at least 75 percent of its revenue from governmental sources. The calculation of public support for purposes of IRS form 1099, Schedule A, includes support from the general public. Accordingly, the bill expands the potential membership of the fund(s) to include corporations not for profit that 75 percent of its revenue from the general public, rather than just those that receive at least 75 percent of their revenue from governments. Additionally, current law does not average the threshold 75 percent governmental funding over time. The revision proposed by the bill differs from the current standard in that under Schedule A, Part II, the level of funding necessary to determine public support is averaged over the preceding five tax years.

In addition, the bill establishes a requirement that organizations qualifying for fund membership based upon revenue form the general public must maintain surplus in a positive amount with the loss and loss adjustment expense reserve at the 70 percent confidence level,[11] as of the end of the fiscal year, as determined by the qualified actuary already evaluating the fund's solvency, as specified in s. 624.4625(1)(d), F.S. If the fund does not maintain the 70 percent confidence level, it must file a remedial plan with the Office of Insurance Regulation (OIR) addressing the financial condition of the fund. The remedial plan is subject to determination by the OIR that the fund will operate on an actuarially sound basis and the fund does not pose a significant risk of insolvency. The bill specifies that funds operating on the effective date of the bill shall have until July 1, 2020 to comply with the solvency evaluation requirements of the bill.[12]

The bill requires that funds operating under s. 624.4625, F.S., maintain excess insurance with a rating of A- or higher from a statistical rating organization[13] deemed acceptable by the commissioner of the OIR.[14]

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[11] Actuaries express their assessment of the sufficiency of financial holdings to cover estimated losses in a given period as a "confidence level" on a percentage scale. A "70 percent confidence level" indicates that financial holdings will be adequate in seven out of ten years to meet estimated losses. *Understanding Confidence Intervals*, SIGMA Actuarial Consulting Group, Inc., www.sigmaactuary.com/download/tt_confidence.pdf. (Last viewed April 6, 2015)

[12] The FIT does not include the qualified actuary's confidence level in its financial filing with the OIR, therefore, the effect that requiring a 70 percent confidence level on the part of the fund's qualified actuary is unknown. However, the current financial condition of the FIT can be obtained from financial information that the FIT has filed with the OIR, which includes the following information:

	Jun 2012 – May 2013	Jun 2013 – May 2014
gross written premium	$17,245,204.00	$21,457,250.00
excess insurance (ceded premiums)	$7,264,403.00	$8,015,477.00
net written premium	$9,980,801.00	$13,441,773.00
surplus at year end	$734,565.00	$786,507.00

Financial Statements and Independent Auditor's Report, Florida Insurance Trust, May 31, 2013, and *Financial Statements and Independent Auditor's Report*, Florida Insurance Trust, May 31, 2014, on file with the Office of Insurance Regulation and the Regulatory Affairs Committee.

[13] There are several financial strength rating organizations, including: A.M. Best (www.ambest.com), Fitch (www.fitchratings.com), Moody's Investor Services (www.moodys.com), and Standard & Poor's (www.standardandpoors.com).

[14] The FIT reports that they currently utilize 14 reinsurers to place their required excess insurance. See *Florida Insurance Trust 2014-2015 Program Carrier Partners* on file with the Regulatory Affairs Committee. All are rated between A++ (Superior) and A- (Excellent) on the A.M. Best financial rating scale, with only one of their reinsurers being rated A-. A.M. Best's Financial Strength Rating is divided between "Secure," with ratings between A++ and B+, or "Vulnerable," with ratings of B or lower. Among the "Secure" ratings, A++ and A+ are described as "Superior," A and A- are described as "Excellent," and B++ and B+ are described as

B. SECTION DIRECTORY:

Section 1: Amends s. 624.4625(1), F.S., relating to corporation not for profit self-insurance funds eligibility criteria.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Revenue Estimating Impact Conference held on March 6, 2015, there will be an insignificant negative fiscal impact[15] to insurance premium tax revenue collections.[16] Premium tax revenues will be impacted to the extent that increased participation in corporation not for profit self-insurance funds moves premiums from the generally applicable rate of 1.75 percent of premium to the 1.6 percent of premium applicable to funds organized under s. 624.4625, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Corporations not for profit that choose to self-insure their risks by joining or forming a corporation not for profit self-insurance fund should be able to obtain savings over purchasing coverage of these risks in the general market. This would reduce their fundraising burdens and/or allow revenues to be redirected to other purposes. The extent of the savings has not been estimated.

D. FISCAL COMMENTS:

The impact to premium tax revenue collections as a result of this legislation could potentially be mitigated if corporations not for profit choose to obtain self-insurance for lines that they do not currently carry, thus increasing premium tax revenue.

"Good" in terms of A.M. Best's opinion of the company's ability to meet financial obligations. See *Guide to Best's Financial Strength Ratings*, A.M. Best, http://www.ambest.com/ratings/guide.pdf. (Last viewed April 6, 2015)

[15] The Revenue Estimating Conference denotes that an insignificant negative impact is less than $50,000.

[16] Revenue Estimating Conference impact analysis (March 6, 2015) available online at http://edr.state.fl.us/Content/conferences/revenueimpact/index.cfm (Last visited March 11, 2015)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Government Operations Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Amends s. 624.4625(1), F.S., to expand the types of corporations not for profit qualifying for membership in a corporation not for profit self-insurance fund to include those that receives at least 75 percent of their funding from the general public, in addition those 75 percent funded from governmental sources.
- Provides a minimum acceptable confidence level by the qualified actuary providing a financial evaluation under the statute regarding the sufficiency of its surplus to meet estimated losses for any fund that has members qualifying for participation based upon funding from the general public.
- Provides remedial actions for funds qualifying under this legislation, which do not maintain the requisite positive surplus and actuarial confidence level.
- Provides a compliance date of July 1, 2020, for corporation not for profit self-insurance funds operating prior to the effective date of the bill, to meet the positive surplus and actuarial confidence level required for funds with members qualifying based upon funding from the general public.
- Provides a requirement that all funds operating under s. 624.4625, F.S., maintain excess insurance with a rating of A- or higher from a statistical rating organization deemed acceptable by the commissioner of the OIR, without qualification as to their inception date or membership's funding source.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to the regulation of not-for-profit self-insurance funds; amending s. 624.4625, F. S.; revising requirements for the formation of corporation not for profit self-insurance funds; providing an effective date.

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

Section 1. Subsection (1) of section 624.4625, Florida Statutes, is amended to read

624.4625 Corporation not for profit self-insurance funds.—

(1) Notwithstanding any other provision of law, any two or more corporations not for profit located in and organized under the laws of this state may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any one or combination of property or casualty risk, provided the corporation not for profit self-insurance fund that is created:

(a) Has annual normal premiums in excess of $5 million.

(b) Requires for qualification that each participating member receive at least 75 percent of its revenues from:

1. Local, state, or federal governmental sources or a combination of such sources; or

2. The public, as evidenced on the organization's most recent Internal Revenue Service Form 990 or Form 990-EZ and

Schedule A, and is a publicly supported organization under s. 501(c)(3) of the Internal Revenue Code.

(c) Uses a qualified actuary to determine rates using accepted actuarial principles and annually submits to the office a certification by the actuary that the rates are actuarially sound and are not inadequate, as defined in s. 627.062.

(d) Uses a qualified actuary to establish reserves for loss and loss adjustment expenses and annually submits to the office a certification by the actuary that the loss and loss adjustment expense reserves are adequate. If the actuary determines that reserves are not adequate, the fund shall file with the office a remedial plan for increasing the reserves or otherwise addressing the financial condition of the fund, subject to a determination by the office that the fund will operate on an actuarially sound basis and the fund does not pose a significant risk of insolvency.

(e) A fund with at least one member qualifying solely under subparagraph (b)2. shall:

1. Maintain surplus in a positive amount with the loss and loss adjustment expense reserve at the 70-percent confidence level as of the end of the fiscal year as determined by the qualified actuary specified in paragraph (d).

2. If a fund does not maintain surplus in a positive amount with the loss and loss adjustment expense reserve at the 70-percent confidence level, a fund shall file with the office a remedial plan addressing the financial condition of the fund,

subject to a determination by the office that the fund will operate on an actuarially sound basis and the fund does not pose a significant risk of insolvency.

(f) A corporation not for profit self-insurance fund operating under this section before July 1, 2015, has until July 1, 2020, to comply with paragraph (e).

(g) ~~(e)~~ Maintains a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified actuary. At a minimum, this program must:

1. Purchase excess insurance from authorized insurance carriers or eligible surplus lines insurers or reinsurers. Any entity providing such excess insurance shall have a rating of A- or higher from a statistical rating organization deemed acceptable by the commissioner.

2. Retain a per-loss occurrence that does not exceed $350,000.

(h) ~~(f)~~ Submit to the office annually an audited fiscal year-end financial statement by an independent certified public accountant within 6 months after the end of the fiscal year.

(i) ~~(g)~~ Have a governing body that is comprised entirely of officials from corporations not for profit that are members of the corporation not for profit self-insurance fund.

(j) ~~(h)~~ Use knowledgeable persons or business entities to administer or service the fund in the areas of claims administration, claims adjusting, underwriting, risk management,

loss control, policy administration, financial audit, and legal areas. Such persons must meet all applicable requirements of law for state licensure and must have at least 5 years' experience with commercial self-insurance funds formed under s. 624.462, self-insurance funds formed under s. 624.4622, or domestic insurers.

(k) ~~(i)~~ Submit to the office copies of contracts used for its members that clearly establish the liability of each member for the obligations of the fund.

(l) ~~(j)~~ Annually submit to the office a certification by the governing body of the fund that, to the best of its knowledge, the requirements of this section are met.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 463 Ticket Sales
SPONSOR(S): Business & Professions Subcommittee; Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** SB 742

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 3 N, As CS	Butler	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee	9 Y, 3 N	Lolley	Massengale
3) Regulatory Affairs Committee		Butler BSB	Hamon K.W.H.

SUMMARY ANALYSIS

Several sections of chapter 817, F.S., prohibit certain fraudulent types of activities related to admission tickets and provide for civil or criminal penalties.

The bill amends s. 817.36, F.S., to:

- Provide definitions for "department" to mean the Department of Agriculture and Consumer Services (Department), "face value," "online marketplace," "place of entertainment," "resale website," and "ticket";
- Clarify when a ticket may be resold or offered for resale for more than $1 over face value;
- Clarify the required guarantees and disclosures for ticket resale websites and online marketplaces;
- Require a person, resale website, or online marketplace to make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction;
- Prohibit a resale website or online marketplace from making any representation of affiliation or endorsement with a venue or artist without the express written consent of the venue or artist, unless such use constitutes fair use under federal law;
- Provide penalties for violations: a person who violates a provision of s. 817.36, F.S., related to the resale of a ticket commits a misdemeanor of the second degree, and a person who uses or distributes software intended to circumvent the ticket buying process or misrepresents affiliation or endorsement with a venue or artist without approval commits a felony of the third degree;
- Allow a person to bring a declaratory action in certain circumstances; and
- Allow for actual damages, including attorney fees and court costs, in certain circumstances.

The bill is expected to have an insignificant fiscal impact on state government and an indeterminate fiscal impact on local government and the private sector. The Criminal Justice Impact Conference (CJIC) met March 27, 2015, and determined this bill will have an insignificant impact on state prison beds. See the Fiscal Analysis & Economic Impact Statement for more details.

The bill provides an effective date of October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tickets – Definition and Use

Absent a statute to the contrary, an event or admission ticket is considered to be a license to witness the performance, which may be revoked by the owner or proprietor at will, before or after admission of the ticketholder.[1] Florida law does not currently address whether an event or admission ticket is deemed to be a license or a property interest.

Without a statutory definition, a ticket is generally considered a license, and the ticket seller is able to place restrictions upon the use of that ticket. For example, a common restriction placed on an event or admission ticket by the seller is the inability to reenter the venue facility upon leaving. In addition to manner of use restrictions, the ticket seller is also able to place conditions and restrictions upon the resale or transferability of the ticket.

Generally, a person or entity offering to resell a ticket may only charge $1 above the admission price charged by the initial ticket seller. A person or entity must abide by these restrictions for tickets for passage or accommodations on a common carrier unless the person or entity is a travel agency,[2] multiday or multievent tickets to a theme park or entertainment complex,[3] and tickets issued by a charitable organization that offers no more than 3,000 tickets per performance.[4]

Any other tickets may be resold for a price greater than $1 above the admission price if the person or website is:

- Authorized to do so by the original ticket seller; or,
- Makes and posts certain guarantees and disclosures.[5]

A person or website offering tickets for resale that is not authorized by the original ticket seller must guarantee a full refund, including all fees, when a ticketed event is canceled, the purchaser is denied admission except when such denial is the fault of the purchaser, or the ticket is not delivered in the manner requested by the purchaser.[6] Further, such person or website operator must disclose that it is not the issuer, original seller, or reseller of the ticket does not control the pricing, and the ticket may be resold for more than its original value.[7]

A person who knowingly resells a ticket in violation of the ticket resale provisions of s. 817.36, F.S., is liable to the state for a civil penalty equal to three times the amount for which the ticket or tickets were sold.[8]

Currently, s. 817.36(5), F.S., provides that a person who intentionally uses or sells software to circumvent a security measure, access control system, or any other control or measure that is used to ensure an equitable ticket-buying process on a ticket seller's website is liable to the state for a civil penalty equal to three times the amount for which the ticket or tickets were sold.

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[1] 27A Am. Jur. 2d Entertainment and Sports Law § 42.
[2] s. 817.36(1)(a), F.S.
[3] s. 817.36(1)(b), F.S.
[4] s. 817.36(1)(c), F.S.
[5] s. 817.36(1)(d), F.S.
[6] *Id.*
[7] *Id.*
[8] s. 817.36(4), F.S.

"Software" is defined in s. 817.36(6), F.S., as computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.

Effect of the Bill

The bill amends s. 817.36, F.S., to retitle the section from "Resale of tickets" to "Ticket sales."

Definitions

A new subsection is created to define the following terms:

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

"Face value" means "the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket."

"Online marketplace" means:

> [A] website, software application for a mobile device, or any other digital platform that provides a forum for the buying and selling of tickets, but does not include a website, software application for a mobile device, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment.

"Place of entertainment" means:

> [A] privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held and for which an entry fee is charged. A facility owned by a school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged.

"Resale website" means:

> [A] website, software application for a mobile device, any other digital platform, or portion thereof, whose primary purpose is to facilitate the resale of tickets to consumers, but excludes an online marketplace.

"Ticket" means:

> [A] printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right.

Ticket as a License

As discussed above, a ticket generally is considered a license under common law absent a statute declaring otherwise, and the ticket seller is able to place restrictions upon the use of that ticket. The bill creates a definition for "ticket" that does not declare a ticket either as a license or personal property. A ticket will likely still be considered a license under common law, and provide whatever rights and privileges that entails.

Resale of Tickets and Required Guarantees

The bill renumbers s. 817.36(1), F.S., to s. 817.36(2), F.S., and authorizes certain tickets resold or offered through a resale website or online marketplace to make the required guarantees and disclosures to sell a ticket for more than $1 above the face value charged by the original ticket seller unless such resale website or online marketplace is authorized to sell such tickets by the original ticket seller.

A resale website or online marketplace that is not authorized to resell tickets by the original ticket seller may still resell tickets that are not common carrier tickets, multiday or multievent tickets to a park or entertainment complex, or tickets from a charitable organization by guaranteeing a full refund of the amount paid for the ticket including fees if:

- The event is canceled;
- The purchaser is denied admission through no fault of the purchaser; or,
- The ticket is not delivered pursuant to any delivery guarantee and such failure prevents attendance of the ticket event.

The bill removes the current requirement that a ticket reseller must deliver a ticket to the purchaser in the manner requested by the purchaser.

The bill renumbers the current s. 817.36(2) and (3), F.S., to s. 817.36(3) and (4), F.S., and includes the place of entertainment in the list of locations where an individual or entity may not sell or purchase a ticket without the prior written consent of the owner.

Prohibition on Use of Technology to Circumvent Ticket Buying Security Measures

The bill removes the current s. 817.36(5) and (6), F.S., and replaces them with a new s. 817.36(5), F.S., which more explicitly defines and prohibits the use of technology to circumvent the ticket buying process. Specifically, a person may not:

- Sell, use, or cause to be used by any means, method, technology, devices, or software that is designed, intended, or functions to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser or circumvent a security measure, an access control system, or other control, authorization, or measure on a ticket issuer's or resale ticket agent's website, software application for a mobile device, or digital platform; or,

- Use or cause to be used any means, method, or technology that is designed, intended, or functions to disguise the identity of the purchaser with the purpose of purchasing or attempting to purchase via online sale a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.

A person who knowingly uses a means, method, technology, device, or software to violate subsection (5) commits a felony of the third degree, punishable as provided in s. 775.082, F.S.,[9] or s. 775.084, F.S.,[10] and each ticket purchase, sale, or violation of subsection (5) constitutes a separate offense.

Ticket Resale Disclosures

The bill creates s. 817.36(6), F.S., to require that a resale website or online marketplace make certain disclosures to a prospective ticket purchaser prior to a resale transaction. Such disclosures may be on the resale website or online marketplace, or be made in person and include:

[9] s. 775.082(3)(d), F.S., provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.
[10] s. 775.084, F.S., provides enhanced penalties for habitual felony offenders.

- The refund policy of the person, resale website, or online marketplace in connection with the cancellation or postponement of an entertainment event;
- That it is a resale website or online marketplace and prices of tickets can often exceed face value; and,
- If the ticket is in the actual physical possession of the reseller, the face value and exact location of the seat offered for sale, including a section, row, and seat number, or area specifically designated as accessible seating; or,
- If the ticket is not in the actual physical possession of the reseller:
    - That the ticket offered for sale is not in the actual physical possession of the reseller;
    - The period of time when the reseller reasonably expects to have the ticket in actual physical possession and available for delivery; and,
    - Whether the reseller is actively making an offer to procure the ticket.

Prohibited Representations

The bill creates s. 817.36(7), F.S., to prohibit a resale website or online marketplace from making any representation of affiliation or endorsement with a venue or artist without the express written consent of the venue or artist, except when it constitutes fair use and is consistent with applicable laws.

A person who knowingly violates subsection (7) commits a felony of the third degree, punishable as provided in s. 775.082, F.S., or s. 775.084, F.S., or by a fine not to exceed $10,000.

Department Enforcement and Administrative, Civil, and Criminal Remedies

The bill creates s. 817.36(8), F.S., which provides that a person who is an aggrieved party may bring a declaratory action to enjoin persons who have violated, are violating, or are likely to violate this section. Persons who have suffered a loss as a result of a violation may recover actual damages, plus attorney fees and court costs.

The bill creates s. 817.36(9), F.S., to provide the Department authority to enforce the requirements of s. 817.36, F.S. The Department may, by its own inquiry or as a result of complaints, conduct an investigation, conduct hearings, subpoena witnesses and evidence, and administer oaths and affirmations if it has reason to believe that a violation of s. 817.36, F.S., has occurred or is occurring.

If, as a result of the investigation, the department has reason to believe a violation of this section has occurred, the department may coordinate with the Attorney General or any state attorney and bring a civil or criminal action and seek any other relief the court deems appropriate. The Department may also provide information to any law enforcement agency concerning a violation of s. 817.36, F.S.

The bill deletes s. 817.36(4), F.S., and creates a similar remedy under s. 817.36(10), F.S., which provides that it is a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S.,[11] or s. 775.083, F.S.,[12] for someone who knowingly resells a ticket or tickets in violation of s. 817.36, F.S., unless another criminal remedy is provided for under a specific section. Each violation constitutes a separate offense.

The bill creates s. 817.36(11), F.S., to require the Department to adopt rules to implement the section.

[11] s. 775.082(4)(b), F.S., provides that the penalty for a second degree misdemeanor shall be a term of imprisonment not exceeding sixty days.

[12] s. 775.083(1)(e), F.S., provides that the fine for a second degree misdemeanor shall be $500, unless a higher amount is authorized by statute.

B. SECTION DIRECTORY:

Section 1 amends s. 817.36, F.S., to define terms; to revise disclosure and guarantee requirements for ticket resellers; to revise provisions related to circumventing security measures; to provide criminal penalties; to provide Department of Agriculture and Consumer Services enforcement authority; and to require rulemaking.

Section 2 provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to the department, consumer complaints will be handled with existing resources within the Division of Consumer Protection. The impact on the Office of Law Enforcement for violations is estimated to be minimal and current staff is expected to be able to handle the additional workload.

   The Criminal Justice Impact Conference (CJIC) met March 27, 2015, and determined this bill would have an insignificant impact on state prison beds (10 or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill provides fines of up to $10,000, which may result in a positive fiscal impact on local government.

2. Expenditures:

   Section 817.36(10), F.S., provides that a person who violates this section commits a second degree misdemeanor. This may result in an indeterminate negative fiscal impact on local government for jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill may require resale websites and online marketplaces to develop new systems to track certain information related to disclosures and guarantees.

A person who violates certain provisions may have to pay a fine of up to $10,000.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department is required to adopt rules to implement s. 817.36, F.S., to enforce the civil and criminal penalties provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Business & Professions Subcommittee considered and adopted one amendment. The amendment:

- Amends the definition of "ticket" to remove language declaring a ticket is a license;
- Amends the definition of "resale website" to clarify that an "online marketplace" is not a resale website;
- Removes the "general felony" provision for a violation of s. 817.36, F.S., and clarifies that only the use or distribution of software intended to circumvent the ticket buying process and misrepresenting oneself as affiliated or endorsed by a venue or artist are third-degree felonies;
- Removes the "ticket broker" registration scheme and the Department's duty to implement and enforce the registration;
- Clarifies several guarantees and disclosures required for resale websites and online marketplaces;
- Clarifies the Department's enforcement authority related to s. 817.36, F.S.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to ticket sales; amending s. 817.36, F.S.; defining terms; revising provisions to include digital platforms; revising certain presale disclosure requirements; revising provisions relating to prohibitions on bypassing portions of the ticket buying process, disguising the identity of a buyer, or circumventing security measures; providing criminal penalties for violations; providing for recovery of damages up to treble the amount of actual damages for such violations; providing criminal penalties for knowingly reselling a ticket in violation of statute; requiring specified disclosures before resale of a ticket; prohibiting misrepresentations of affiliation or endorsement by resellers without consent; providing exceptions; authorizing declaratory judgments; providing criminal penalties for certain violations; requiring rulemaking; deleting provisions imposing penalties for intentionally using or selling software to circumvent certain ticket seller security measures; providing an effective date.

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

Section 1. Section 817.36, Florida Statutes, is amended to read:

817.36 Ticket sales ~~Resale of tickets~~.—

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

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

(b) "Face value" means the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket.

(c) "Online marketplace" means a website, software application for a mobile device, or any other digital platform that provides a forum for the buying and selling of tickets, but does not include a website, software application for a mobile device, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment.

(d) "Place of entertainment" means a privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held and for which an entry fee is charged. A facility owned by a school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged.

(e) "Resale website" means a website, software application for a mobile device, any other digital platform, or portion thereof, whose primary purpose is to facilitate the resale of

tickets to consumers, but excludes an online marketplace.

(f) "Ticket" means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right.

(2)~~(1)~~ A person or entity that offers for resale or resells any ticket may charge only $1 above the face value ~~admission price~~ charged therefor by the original ticket seller of the ticket for the following transactions:

(a) Passage or accommodations on any common carrier in this state. However, this paragraph does not apply to travel agencies that have an established place of business in this state and are required to pay state, county, and city occupational license taxes.

(b) Multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex as defined in s. 561.01(18).

(c) Event tickets originally issued by a charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code for which no more than 3,000 tickets are issued per performance. The charitable organization must issue event tickets with the following statement conspicuously printed or displayed on the face or back of the ticket: "Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more

than $1 over the face value ~~original admission price~~." This paragraph does not apply to tickets issued or sold by a third party contractor ticketing services provider on behalf of a charitable organization otherwise included in this paragraph unless the required disclosure is printed or displayed on the ticket.

(d) Any tickets, other than the tickets in paragraph (a), paragraph (b), or paragraph (c), that are resold or offered through a resale ~~an Internet~~ website or online marketplace~~,~~ unless such resale website or online marketplace is authorized by the original ticket seller to sell such tickets or makes and posts the following guarantees and disclosures on ~~through Internet~~ web pages on which are visibly posted, or links to web pages on which are posted, text to which a prospective purchaser is directed before completion of the resale transaction:

1. The resale website or online marketplace operator guarantees a full refund of the amount paid for the ticket including any servicing, handling, or processing fees, if such fees are not disclosed, when:

a. The ticketed event is canceled;

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser; or

c. The ticket is not delivered to the purchaser ~~in the manner requested and~~ pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's

inability to attend the ticketed event.

2. The resale website or online marketplace operator discloses that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their face ~~original~~ value.

(3)~~(2)~~ This section does not authorize any individual or entity to sell or purchase tickets at any price on property or place of entertainment where an event is being held without the prior express written consent of the owner of the property or place of entertainment.

(4)~~(3)~~ Any sales tax due for resales under this section shall be remitted to the Department of Revenue in accordance with s. 212.04.

(5)(a) A person may not sell, use, or cause to be used by any means, method, technology, devices, or software that is designed, intended, or functions to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser or circumvent a security measure, an access control system, or other control, authorization, or measure on a ticket issuer's or resale ticket agent's website, software application for a mobile device, or digital platform.

(b) A person may not use or cause to be used any means, method, or technology that is designed, intended, or functions to disguise the identity of the purchaser with the purpose of purchasing or attempting to purchase via online sale a quantity

of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.

(c) A person who knowingly violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine not to exceed $10,000. Each ticket purchase, sale, or violation of this subsection constitutes a separate offense.

(d) A party that has been injured by wrongful conduct in violation of this subsection may bring an action to recover all actual damages suffered as a result of any of such wrongful conduct. The court in its discretion may award damages up to three times the amount of actual damages.

~~(4) A person who knowingly resells a ticket or tickets in violation of this section is liable to the state for a civil penalty equal to treble the amount of the price for which the ticket or tickets were resold.~~

(6) A person, resale website, or online marketplace must clearly and conspicuously disclose to a prospective ticket resale purchaser, whether on the resale website or online marketplace, or in person, before a resale:

(a) The refund policy of the person, resale website, or online marketplace in connection with the cancellation or postponement of an entertainment event;

(b) That it is a resale website or online marketplace and

that prices of tickets can often exceed face value; and

(c)1. If the ticket is in the actual physical possession of the reseller, the face value and exact location of the seat offered for sale, including a section, row, and seat number, or area specifically designated as accessible seating; or

2. If the ticket is not in the actual physical possession of the reseller:

a. That the ticket offered for sale is not in the actual physical possession of the reseller.

b. The period of time when the reseller reasonably expects to have the ticket in actual physical possession and available for delivery.

c. Whether the reseller is actively making an offer to procure the ticket.

(7)(a) A resale website or online marketplace shall not make any representation of affiliation or endorsement with a venue or artist without the express written consent of the venue or artist, except when it constitutes fair use and is consistent with applicable laws.

(b) A person who knowingly violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine not to exceed $10,000.

(8)(a) A person aggrieved by a violation of this section may, without regard to any other remedy or relief to which the person is entitled, bring an action to obtain a declaratory judgment that an act or practice violates this section and to

enjoin a person who has violated, is violating, or is otherwise likely to violate this section.

(b) In any action brought by a person who has suffered a loss as a result of a violation of this section, such person may recover actual damages, plus attorney fees and court costs.

(9) If the department, by its own inquiry or as a result of complaints, has reason to believe that a violation of this section has occurred or is occurring, the department may conduct an investigation, conduct hearings, subpoena witnesses and evidence, and administer oaths and affirmations. If, as a result of the investigation, the department has reason to believe a violation of this section has occurred, the department with the coordination of the Department of Legal Affairs and any state attorney, if the violation has occurred or is occurring within her or his judicial circuit, may bring a civil or criminal action and seek other relief, including injunctive relief, as the court deems appropriate. This subsection does not prohibit the department from providing information to any law enforcement agency or to any other regulatory agency and the department may report to the appropriate law enforcement officers any information concerning a violation of this section.

(10) Except as otherwise provided in this section, a person who knowingly resells a ticket or tickets in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each violation of this section constitutes a separate offense.

(11) The department shall adopt rules to implement this section.

~~(5) A person who intentionally uses or sells software to circumvent on a ticket seller's Internet website a security measure, an access control system, or any other control or measure that is used to ensure an equitable ticket-buying process is liable to the state for a civil penalty equal to treble the amount for which the ticket or tickets were sold.~~

~~(6) As used in this section, the term "software" means computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.~~

Section 2. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 491 Property Insurance Appraisal Umpires and Property Insurance Appraisers
SPONSOR(S): Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Artiles
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 2 N, As CS	Peterson	Cooper
2) Government Operations Appropriations Subcommittee	11 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee		Peterson KP	Hamon K.W.H.

SUMMARY ANALYSIS

An appraisal clause is commonly found in insurance policies. The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process generally works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties.
- Either party may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.

Current law does not limit or restrict who may act as a property insurance appraisal umpire or property insurance appraiser.

The bill creates parts XVII and XVIII of chapter 468, F.S., establishing a licensing program for "property insurance appraisal umpires" and "property insurance appraisers" within the Department of Business and Professional Regulation (DBPR). The bill creates definitions; requirements for licensure, including application, fees, background screening, examination, and education; continuing education; mandatory and discretionary grounds for refusal, suspension, or revocation; and a code of conduct.

The bill appropriates four full-time equivalent positions, $605,874 in recurring funds, and $59,053 in nonrecurring funds from the Professional Regulation Trust Fund within the DBPR to implement provisions of the bill. The bill is not anticipated to have a fiscal impact on local government. The bill will have a negative fiscal impact on the private sector because it imposes licensing fees and ongoing costs of licensure in order to practice as an umpire or appraiser which may also affect the cost to obtain those services. It may, however, improve appraisal results, which would have a positive impact on both insurers and policyholders.

The bill takes effect January 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Property Insurance Appraisers and Umpires

An appraisal clause is commonly found in insurance policies.[1] The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts. The appraisal process generally works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties. The umpire's decision becomes binding only by a majority agreement between the two appraisers and the umpire.
- Either party may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.[2]

Current law does not limit or restrict who may act as a property insurance appraisal umpire or property insurance appraiser.

Public Adjusters

A public adjuster is a person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.[3] The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim. Public adjusters are licensed by the Department of Financial Services (DFS) and must meet specified age, residency, examination, and surety bond requirements.[4] The conduct of a public adjuster is governed by statute and by rule.[5] A company employee adjuster (known as a "company adjuster") performs the same services as a public adjuster except he or she is employed by the insurer.[6]

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[1] *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla.3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America,* 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal provisions.
[2] *See* s. 627.70151, F.S.
[3] s. 626.854(1), F.S.
[4] s. 626.865, F.S.
[5] *See generally,* ss. 626.854, 626.8698, 626.876, 626.878, 626.8795 and 626.8796, F.S., and Rule 69B-220, F.A.C.
[6] s. 626.856, F.S.

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.[7] The DBPR is created in s. 20.165, F.S., and includes the following eleven divisions:

- Division of Administration
- Division of Alcoholic Beverages and Tobacco
- Division of Certified Public Accounting
- Division of Florida Condominiums, Timeshares, and Mobile Homes
- Division of Hotels and Restaurants
- Division of Pari-mutuel Wagering
- Division of Professions
- Division of Real Estate
- Division of Regulation
- Division of Technology
- Division of Service Operations
- Division of Drugs, Devices and Cosmetics

The following boards and professions are established within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

The following board and commissions are established within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.
- Florida Building Commission under ch. 553, F.S.

The Board of Accountancy, created under ch. 473, F.S., is established within the Division of Certified Public Accounting.

In addition to administering the professional boards, the DPBR processes applications for licensure and license renewal. The DBPR also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

[7] Ch. 93-220, Laws of Florida.

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR and the Divisions of Certified Public Accounting, Professions, and Real Estate.

The Sunrise Act

Florida does not currently license or regulate property insurance appraisal umpires or property insurance appraisers. A proposal for new regulation of a profession must meet the requirements of s. 11.62, F.S., the Sunrise Act.

The act sets forth policy and minimum requirements for legislative review of bills proposing regulation of an unregulated function. In general, the act states that regulation should not occur unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession of occupation, the act requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires proponents of legislation proposing new regulation to provide the following information to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;

- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation; and
- The details of any previous efforts in this state to implement regulation of the profession or occupation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal is directed to assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

Proponents' Response to the Sunrise Act

The sponsor of the bill has submitted a response[8] in support of the need for regulation. It states that the unregulated profession poses a substantial harm to the public health, safety, or welfare. In pertinent part, the response provides:

> Currently, the state licenses adjusters in three categories, company adjuster, independent adjuster and public adjuster, if an individual is unable to pass these tests, or if they lose their license, they are able to become an insurance property appraisers [sic] and/or an insurance property umpire with no regulation. Further, convicted felons are able to become insurance property appraisers and/or insurance property umpires.
>
> The Courts have ruled that a decision of the insurance appraisal panel (any 2 of the 3 members of the panel) is binding on the parties unless fraud is involved, (appraisals are for the dollar amount of the insurance loss and the panels are not empowered to determine coverage).
>
> In the past, the public has been harmed when roofers, contractors and non-insurance people are involved and they don't properly appraise the amount of damages, for example, roofers have been known to appraise the roof of a home only without considering the interior of a home thus injuring the public in that they don't receive the proper insurance funds for the interior of their home and thus they fail to repair the interior making the damages worse and affecting the value of the home.

Licensing of Property Insurance Appraisal Umpires and Property Insurance Appraisers

The bill creates parts XVII and XVIII of chapter 468, F.S., establishing licensing programs for "property insurance appraisal umpires" and "property insurance appraisers" within the DBPR. The bill amends s. 20.165(4)(a), F.S., to add the programs to establish the programs within the Division of Professions. The regulatory requirements are the same for both programs, as provided below, and apply to residential and commercial residential property insurance contracts with appraisal clauses and to umpires and appraisers who participate in the appraisals.

[8] On file with the House Insurance & Banking Subcommittee.

- *Definitions*

The bill provides definitions of terms, including "property insurance appraisal umpire "and "property insurance loss appraiser."

- *Licensure Requirements*

The bill establishes licensure requirements for an applicant, which include:

- A completed application;
- Payment of fees, to be deposited into the Professional Regulation Trust Fund;
- Level two background screening, to include fingerprint retention;
- Successful completion of an examination; and,
- Satisfaction of one of the following conditions:

Option 1

- Has taught or successfully completed four hours of classroom coursework, approved by the DBPR, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the DBPR and is
- A licensed or retired engineer;
- Has, within the preceding two years, been licensed as a general contractor, building contractor, residential contractor, architect, geologist, certified public accountant, or attorney; or
- Has received a baccalaureate degree from an accredited four-year college or university in the field of engineering, architecture, or building construction.

Option 2

- Has been licensed as an adjuster for a minimum of two years whose license covers all lines of insurance, except life and annuities.

Option 3

- Has received a minimum of eight semester hours / 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.

Option 4

- Has successfully completed 40 hours of classroom coursework, approved by the DBPR, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the DBPR.

- *Continuing Education*

The bill requires a minimum of 30 hours of approved continuing education (CE) and five hours of ethics biennially, prior to renewal and authorizes the DBPR to establish standards for CE providers and courses.

- *Inactive Status*

The bill allows a licensee to place a license on inactive status and to reactivate the license upon filing an application, paying a fee, and completing a maximum of 14 hours of CE.

- *Certification of Corporation*

The bill authorizes licensees to offer services through a partnership, corporation, or other business entity, but prohibits the entity, itself, from being licensed. The entity remains responsible for the conduct of its employees; the licensees remain liable for their individual performance and are not relieved of responsibility by reason of employment.

- *Grounds for Refusal, Suspension, or Revocation of a License.*

The bill establishes conditions for mandatory and discretionary denial, suspension, or revocation of licensure.

- *Code of Conduct*

The bill establishes ethical standards related to confidentiality; recordkeeping; fees and expenses; maintenance of records; advertising; integrity and impartiality; skill and experience; gifts and solicitation; and, with respect to property insurance appraisal licensees, communications with parties.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.165(4)(a), F.S., establishing the property insurance appraisal umpire licensing program and the property insurance appraisers licensing program within the Department of Business and Professional Regulation.

Section 2: Creates Part XVII of chapter 468, Florida Statutes, consisting of sections 468.85 through 468.8519, F.S., relating to property insurance appraisal umpires.

Section 3: Creates Part XVIII of chapter 468, Florida Statutes, consisting of sections 468.86 through 468.8619, F.S., relating to property insurance appraisers.

Section 4: Provides an appropriation effective July 1, 2015.

Section 5: Except as otherwise expressly provided in the act, provides an effective date of January 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Provisions of the bill authorize license fees for property insurance appraisal umpires and appraisers up to the following caps:[9]

- Application: $200 (nonrefundable)
- Examination: $200
- Initial license: $250
- Initial certificate of authorization: $250
- Biennial license renewal: $500
- Application for inactive status: $125
- Reactivation of an inactive license: $250
- Continuing education providers: $600

The DBPR estimates receiving approximately 4,000 applications the first year, 3,000 the second year, and 2,000 per year thereafter for an estimated license base of 10,000.[10] According to the DBPR, using the maximum allowable fee amount will result in estimated revenues from licensing fees that total $2,467,000 for FY 2015-2016; $1,850,250 for FY 2016-2017; and $2,304,500 for FY 2017-2018.

[9] Section 455.219, F.S., requires the DBPR to develop a long-range estimate of the revenue required to implement a professional licensing program and fees must be set accordingly. Fees must be sufficient to cover costs and provide for a reasonable cash balance and adjusted if the balance in the profession's trust fund becomes too low or high.

[10] These estimates are based on estimates provided by the Department of Financial Services to the Florida Department of Law Enforcement when a similar bill was filed in 2011. Florida Department of Business & Professional Regulation, Agency Analysis of 2015 House Bill 491, p. 10 (March 11, 2015).

2. Expenditures:

   The bill appropriates four full-time equivalent positions, $605,874 in recurring funds, and $59,053 in nonrecurring funds from the Professional Regulation Trust Fund within the DBPR to implement provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a negative fiscal impact on the private sector because it imposes licensing fees and ongoing costs of licensure in order to practice as a property insurance umpire or appraiser which may also affect the cost to obtain those services. It may, however, improve appraisal results which would have a positive impact on both insurers and policyholders.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides the DBPR with rulemaking authority to:

- Establish fees, up to maximum amounts established in statute, for: initial licensure ($650); biennial renewal ($500); inactivation ($125); reactivation ($250); certification of continuing education providers ($600); and a delinquency fee.
- Establish a process for determining compliance with the pre-licensure requirements.
- Adopt forms.
- Prescribe procedures for biennial renewal and inactivating or reactivating a license.
- Establish standards for CE providers and courses, a process for determining compliance with the pre-licensure requirements, and rules prescribing the forms necessary to administer the pre-licensure requirements.

- Requiring CE and additional CE hours for failure to complete the required CE hours by the end of the renewal period and prescribing CE requirements as a condition for the reactivation of an inactive license.
- Adopt the uniform application.
- Adopt any rules as may be necessary to administer the respective parts.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 180-181 and 667-668 reference a fee cap for initial certificate of authorization of $250; however, the fee is not included within the DBPR's rulemaking authority to adopt.

The bill does not protect the title of "property insurance appraiser" or "property insurance appraisal umpire," and does not expressly prohibit the unlicensed practice of property insurance appraising or umpiring. Even if it is construed as prohibiting unlicensed practice, it is limited only to appraisals required by residential or commercial residential property insurance contracts. It would not cover other loss appraisals, such as commercial property or motor vehicle loss appraisals.

The DBPR notes the following operational issues:

- Lines 155-158 and 642-645 reference the use of a uniform application for nonresident licensure of the National Association of Insurance Commissioners for nonresident agent licensing. The DBPR was unable to locate such a form on the association's website. The available form related to individual producer license/registration and did not contain a category applicable to insurance appraisers or umpires or any category or licensee/registrant regulated by the DBPR; or an option to disclose native language or highest level of education, as required by the bill.
- Lines 198-199 and 685-686 reference a written application, which suggests that online application may not be allowed.
- Lines 323-324 and 809-810 create a licensing option for a licensed adjuster "whose license covers all lines of insurance except the life and annuities class." This appears to have the unintended consequence of disqualifying those adjusters whose licenses do include this class.
- Lines 361-366 and 847-852 require that an applicant for licensure via endorsement not be approved pending the outcome of any ongoing licensure investigation in the licensing state. The DBPR is concerned with its ability to verify licensure status and whether the obligation to hold an application in abeyance violates ch.120, F.S.
- Lines 342 and 828 describe an applicant who is "untrustworthy" or "incompetent" as unqualified for licensure,[11] but do not define those terms or the criteria for making the determination.
- In lines 456-457 and 942-943 the phrase "or will be used" should be removed since it would require discipline based on conduct that has not happened.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2015, the Insurance & Banking Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The first amendment removed the language creating a

[11] Likewise, the bill defines both umpires and appraisers as "competent, licensed, and independent and impartial third part[ies]," which is not a standard licensing construct. Instead, those characteristics would more typically be included as required standards of practice. The Department of Financial Services notes "While conceptually the premise of having impartial appraisers is ideal, if the claimant and insurer each chose their own appraiser it will be difficult to achieve impartiality. Currently, a public adjuster can also be the appraiser on the same claim as long as the public adjuster does not charge for their services as an appraiser. When the public adjuster's compensation is based on a percentage of the claim it would seem impossible to reach total impartiality; however the claimant does not incur additional expenses for the appraiser services. If the public adjuster were not allowed to perform both duties it is likely they would recommend another public adjuster with whom they have a working relationship as the insured's appraiser. This would still limit their ability to be impartial and cause the claimant to pay more in fees which are not regulated in this legislation." Florida Department of Financial Services, Agency Analysis of 2015 House Bill 491, p. 1 (March 23, 2015).

mandatory appraisal process. The second and third amendments reduced the period of time during which a separately-licensed professional (general contractor, residential contractor, architect, geologist, certified public accountant, attorney, or adjuster) must have held the separate professional license in order to be eligible for licensure as a property insurance appraisal umpire or property insurance appraiser.

The staff analysis is drafted to reflect the committee substitute as passed by the Insurance and Banking Subcommittee.

On April 7, 2015, the Government Operations Appropriations Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Establish the property insurance appraisal umpire licensing program and the property insurance appraisers licensing program within the Department of Business and Professional Regulation (DBPR).
- Clarifies that fee revenue for insurance appraisal umpires will be deposited into the Professional Regulation Trust Fund upon collection by the DBPR, and clarifies the fingerprint submittal process required of prospective licensees.
- Clarifies that fee revenue for property insurance appraisers will be deposited into the Professional Regulation Trust Fund upon collection by the DBPR, and clarifies the fingerprint submittal process required of prospective licensees.
- Provides an appropriation of $605,874 in recurring funds and $59,053 in nonrecurring funds from the Professional Regulation Trust Fund and four full-time equivalent positions to make technology updates to the licensing system utilized by the DBPR, and to implement provisions of the bill.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to property insurance appraisal umpires and property insurance appraisers; amending s. 20.165, F.S.; establishing specified programs within the Division of Professions of the Department of Business and Professional Regulation; creating part XVII of chapter 468, F.S., relating to property insurance appraisal umpires; creating the property insurance appraisal umpire licensing program within the department; providing legislative findings; providing applicability; authorizing the department to adopt rules; providing definitions; authorizing the department to establish fees; providing for the deposit of fees; providing licensing application requirements; providing authority and procedures regarding submission and processing of fingerprints; providing examination requirements; providing application requirements for licensure as a property insurance appraisal umpire; providing licensure renewal requirements; authorizing the department to adopt rules; providing continuing education requirements; providing requirements for the inactivation of a license by a licensee; providing requirements for renewing an inactive license; establishing license reactivation fees; providing for certification of partnerships and corporations

offering property insurance appraisal umpire services; providing grounds for compulsory refusal, suspension, or revocation of an umpire's license; providing grounds for discretionary denial, suspension, or revocation of an umpire's license; providing ethical standards for property insurance appraisal umpires; creating part XVIII of chapter 468, F.S., relating to property insurance appraisers; creating the property insurance appraiser licensing program within the department; providing legislative findings; providing applicability; authorizing the department to adopt rules; providing definitions; authorizing the department to establish fees; limiting fee amounts; providing licensing application requirements; providing authority and procedures regarding submission and processing of fingerprints; providing examination requirements; providing application requirements for licensure as a property insurance appraiser; providing licensure renewal requirements; authorizing the department to adopt rules; providing for the deposit of fees; providing continuing education requirements; providing requirements for the inactivation of a license by a licensee; providing requirements for renewing an inactive license; establishing license reactivation fees; providing for certification of partnerships and corporations

offering property insurance appraiser services; providing grounds for compulsory refusal, suspension, or revocation of an appraiser's license; providing grounds for discretionary denial, suspension, or revocation of an appraiser's license; providing ethical standards; providing an appropriation and authorizing positions; providing effective dates.

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

Section 1. Paragraph (a) of subsection (4) of section 20.165, Florida Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.—There is created a Department of Business and Professional Regulation.

(4)(a) The following boards and programs are established within the Division of Professions:

1. Board of Architecture and Interior Design, created under part I of chapter 481.

2. Florida Board of Auctioneers, created under part VI of chapter 468.

3. Barbers' Board, created under chapter 476.

4. Florida Building Code Administrators and Inspectors Board, created under part XII of chapter 468.

5. Construction Industry Licensing Board, created under part I of chapter 489.

6. Board of Cosmetology, created under chapter 477.

7. Electrical Contractors' Licensing Board, created under part II of chapter 489.

8. Board of Employee Leasing Companies, created under part XI of chapter 468.

9. Board of Landscape Architecture, created under part II of chapter 481.

10. Board of Pilot Commissioners, created under chapter 310.

11. Board of Professional Engineers, created under chapter 471.

12. Board of Professional Geologists, created under chapter 492.

13. Board of Veterinary Medicine, created under chapter 474.

14. Home inspection services licensing program, created under part XV of chapter 468.

15. Mold-related services licensing program, created under part XVI of chapter 468.

16. Property insurance appraisal umpires licensing program, created under part XVII of chapter 468.

17. Property insurance appraisers licensing program, created under part XVIII of chapter 468.

Section 2. Part XVII of chapter 468, Florida Statutes, consisting of sections 468.85 through 468.8519, is created to read:

PART XVII

PROPERTY INSURANCE APPRAISAL UMPIRES

468.85 Property insurance appraisal umpire licensing program; legislative purpose; scope of part.—

(1) The property insurance appraisal umpire licensing program is created within the Department of Business and Professional Regulation.

(2) The Legislature finds it necessary in the interest of the public safety and welfare to prevent damage to real and personal property, to avert economic injury to the residents of this state, and to regulate persons and companies that hold themselves out to the public as qualified to perform as property insurance appraisal umpires.

(3) This part applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process.

(4) The department may adopt rules to administer this part.

468.851 Definitions.—As used in this part, the term:

(1) "Appraisal" means the process of estimating or evaluating actual cash value, the amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and an insured have failed to mutually agree on the value of the loss pursuant to a residential or commercial residential property insurance contract that is required in such contracts

for the resolution of a claim dispute by appraisal.

(2) "Competent" means properly licensed, sufficiently qualified, and capable of performing an appraisal.

(3) "Department" means the Department of Business and Professional Regulation.

(4) "Independent" means not subject to control, restriction, modification, and limitation by the appointing party. An independent umpire shall conduct his or her investigation, evaluation, and estimation without instruction by an appointing party.

(5) "Property insurance appraisal umpire" or "umpire" means a competent, independent, licensed, and impartial third party selected by the licensed appraisers for the insurer and the insured to resolve issues that the licensed appraisers are unable to reach an agreement during the course of the appraisal process pursuant to a residential or commercial property insurance contract that is required to provide for resolution of a claim dispute by appraisal.

(6) "Property insurance loss appraiser" or "appraiser" means a competent, licensed, and independent and impartial third party selected by an insurer or an insured to develop an appraisal for purposes of the appraisal process under a residential or commercial property insurance contract that provides for resolution of a claim dispute by appraisal.

(7) "Uniform application" means the uniform application of the National Association of Insurance Commissioners for

nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the department.

468.8511 Fees.—

(1) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education. The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination, licensing and renewal, inactive status application, and reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(3) The fee for an initial license shall not exceed $250.

(4) The fee for an initial certificate of authorization shall not exceed $250.

(5) The fee for a biennial license renewal shall not

exceed $500.

(6) The fee for application for inactive status shall not exceed $125.

(7) The fee for reactivation of an inactive license shall not exceed $250.

(8) The fee for applications from providers of continuing education may not exceed $600.

(9) The fee for fingerprinting shall be included in the department's costs for each background check.

(10) All fees shall be deposited into the Professional Regulation Trust Fund of the Department of Business and Professional Regulation.

468.85115 Application for license as a property insurance appraisal umpire.—

(1) The department shall not issue a license as a property insurance appraisal umpire to any person except upon written application previously filed with the department, with qualification and advance payment of all applicable fees. Any such application shall be made under oath or affirmation and signed by the applicant. The department shall accept the uniform application for a nonresident property insurance appraisal umpire. The department may adopt revised versions of the uniform application by rule.

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number, residence address, business address, mailing address, contact

telephone numbers, including a business telephone number, and e-mail address.

(b) Proof that he or she has completed or is in the process of completing any required prelicensing course.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a professional license by the supervising officials of any state.

(d) Proof that the applicant meets the requirements for licensure as a property insurance appraisal umpire as required under ss. 468.8511 and 468.8512, and this section.

(e) The applicant's gender.

(f) The applicant's native language.

(g) The applicant's highest achieved level of education.

(h) All education requirements that the applicant has completed to qualify as a property insurance appraisal umpire, including the name of the course, the course provider, and the course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency must forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(5) Fees for state and federal fingerprint processing and retention shall be borne by the applicant. The state cost for fingerprint processing is that authorized in s. 943.053(3)(b) for records provided to persons or entities other than those specified as exceptions therein.

(6) Fingerprints submitted to the Department of Law Enforcement pursuant to this section shall be retained by the Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. The fingerprints shall be submitted to the Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history check. Any arrest record identified shall be reported to the department.

(7) The department shall develop and maintain as a public record a current list of licensed property insurance appraisal umpires.

468.8512 Examinations.-

(1) A person desiring to be licensed as a property insurance appraisal umpire must apply to the department after satisfying the examination requirements of this part.

(2) An applicant may practice in this state as a property insurance appraisal umpire if he or she passes the required examination, is of good moral character, and meets one of the

following requirements:

(a) The applicant is currently licensed, registered, certified, or approved as an engineer as defined in s. 471.005 or as a retired professional engineer as defined in s. 471.005, and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the department.

(b) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed, registered, certified, or approved as a general contractor, building contractor, or residential contractor as defined in s. 489.105 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(c) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal

procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(d) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been a qualified geologist or professional geologist as defined in s. 492.102 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(e) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed as a certified public accountant as defined in s. 473.302 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(f) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been a licensed attorney in this state and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate

by the department.

(g) The applicant has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(h) The applicant is a currently licensed adjuster whose license covers all lines of insurance except the life and annuities class. The adjuster's license must include the property and casualty class of insurance. The currently licensed adjuster must be licensed for at least 2 years to qualify for a property insurance appraisal umpire's license.

(i) The applicant has received a minimum of 8 semester hours or 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.

(j) The applicant has successfully completed 40 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the department.

(3) The department shall review and approve courses of study for the continuing education of property insurance

appraisal umpires.

(4) The department may not issue a license as a property insurance appraisal umpire to any individual found by it to be untrustworthy or incompetent or who:

(a) Has not filed an application with the department in accordance with s. 485.85115.

(b) Is not a natural person who is at least 18 years of age.

(c) Is not a United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

(d) Has not completed the education, experience, or licensing requirements of this section.

(5) An incomplete application expires 6 months after the date it is received by the department.

(6) An applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

468.8513 Licensure.-

(1) The department shall license any applicant who the department certifies has completed the requirements of ss. 468.8511, 468.85115, and 468.8512.

(2) The department shall not issue a license by endorsement to any applicant for a property insurance appraisal umpire license who is under investigation in another state for any act that would constitute a violation of this part until

such time that the investigation is complete and disciplinary proceedings have been terminated.

468.8514 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8515.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

468.8515 Continuing education.—

(1) The department may not renew a license until the licensee submits satisfactory proof to the department that, during the 2 years before his or her application for renewal, the licensee completed at least 30 hours of continuing education in addition to 5 hours of ethics. Criteria and course content shall be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total required hours, for failure to complete the required hours by the end of the renewal period.

(3) Each umpire course provider, instructor, and classroom course must be approved by and registered with the department before prelicensure courses for property insurance appraisal umpires may be offered. Each classroom course must include a written examination at the conclusion of the course and must cover all of the material contained in the course. A student may

not receive credit for the course unless the student achieves a grade of at least 75 on the examination.

(4) The department shall adopt rules establishing:

(a) Standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and courses. The standards must be designed to ensure that instructors have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this part.

(b) A process for determining compliance with the prelicensure requirements of this part.

The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements of this part.

(5) Approval to teach prescribed or approved appraisal courses does not entitle the instructor to teach any courses outside the scope of this part.

468.8516 Inactive license.-

(1) A licensee may request that his or her license be placed on inactive status by filing an application with the department.

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition for reactivation of an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours

for each year the license was inactive.

(3) The department shall adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses. The department shall prescribe by rule a fee not to exceed $250 for the reactivation of an inactive license and a fee not to exceed $250 for the renewal of an inactive license.

468.8517 Certification of partnerships, corporations, and other business entities.-The practice of or the offer to practice as a property insurance appraisal umpire by licensees through a partnership, corporation, or other business entity offering property insurance appraisal umpire services to the public, or by a partnership, corporation, or other business entities through licensees under this part as agents, employees, officers, or partners is permitted, subject to the provisions of this part. This section does not allow a corporation or other business entities to hold a license to practice property insurance appraisal umpire services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of it agents, employees, or officers by reason of its compliance with this section. An individual practicing as a property insurance appraisal umpire is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a partnership, corporation, or other business entity.

468.8518 Grounds for compulsory refusal, suspension, or revocation of an umpire's license.-The department shall deny an

application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, property insurance appraisal umpire or licensee and shall suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department any examination required under this chapter.

(4) That the license or appointment was willfully used, or will be used, to circumvent any of the requirements or prohibitions of this chapter.

(5) Demonstrated a lack of fitness or trustworthiness to engage as a property insurance appraisal umpire.

(6) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this chapter.

(9) Having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(10)(a) Violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, expressed, or implied, in an appraisal;

(b) Has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or

(c) Has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme.

It is immaterial to a finding that a licensee has committed a violation of this subsection that the victim or intended victim of the misconduct has sustained no damage or loss, that the damage or loss has been settled and paid after the discovery of misconduct, or that such victim or intended victim was a customer or a person in a confidential relationship with the licensee or was an identified member of the general public.

(11)(a) Had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against;

(b) Has had his or her registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or

(c) Has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(12)(a) Made or filed a report or record, written or oral, which the licensee knows to be false;

(b) Has willfully failed to file a report or record required by state or federal law;

(c) Has willfully impeded or obstructed such filing; or

(d Has induced another person to impede or obstruct such filing.

(13) Accepted an appointment as an umpire if the appointment is contingent upon the umpire reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the services of the umpire is contingent upon the opinion, conclusion, or valuation reached by the umpire.

468.85185 Grounds for discretionary denial, suspension, or revocation of an umpire's license.-The department may deny an application for and suspend, revoke, or refuse to renew or continue a license as a property insurance appraisal umpire if

the applicant or licensee has:

(1) Failed to timely communicate with the appraisers without good cause.

(2) Failed or refused to exercise reasonable diligence in submitting recommendations to the appraisers.

(3) Violated any ethical standard for property insurance appraisal umpires set forth in s. 468.8519.

(4) Failed to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

(5) Failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which he or she operates as a property insurance appraisal umpire.

468.8519 Ethical standards for property insurance appraisal umpires.—

(1) CONFIDENTIALITY.—An umpire shall maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law.

(2) RECORDKEEPING.—An umpire shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information when materials are used for research, training, or statistical compilations.

(3) FEES AND EXPENSES.—Fees charged for appraisal services shall be reasonable and consistent with the nature of the case. An umpire shall be guided by the following in determining fees:

(a) All charges for services as an umpire based on time may not exceed actual time spent or allocated.

(b) Charges for costs shall be for those actually incurred.

(c) An umpire may not charge, agree to, or accept as compensation or reimbursement any payment, commission, or fee that is based on a percentage basis, or that is contingent upon arriving at a particular value or any future happening or outcome of the assignment.

(4) MAINTENANCE OF RECORDS.—An umpire shall maintain records necessary to support charges for services and expenses, and upon request shall provide an accounting of all applicable charges to the parties. An umpire licensed under this part shall retain original or true copies of any contracts engaging the umpire's services, appraisal reports, and supporting data assembled and formulated by the umpire in preparing appraisal reports for at least 5 years. The period for retaining the records applicable to each engagement starts on the date of the submission of the appraisal report to the client. The records must be made available by the umpire for inspection and copying by the department upon reasonable notice to the umpire. If an appraisal has been the subject of, or has been admitted as evidence in, a lawsuit, reports, and records the appraisal must be retained for at least 2 years after the date that the trial ends.

(5) ADVERTISING.—An umpire may not engage in marketing

practices that contain false or misleading information. An umpire shall ensure that any advertisements of the umpire's qualifications, services to be rendered, or the appraisal process are accurate and honest. An umpire may not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(6) INTEGRITY AND IMPARTIALITY.—An umpire may not engage in any business, provide any service, or perform any act that would compromise the umpire's integrity or impartiality.

(7) SKILL AND EXPERIENCE.—An umpire shall decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the appraisal are beyond the umpire's skill or experience.

(8) GIFTS AND SOLICITATION.—An umpire may not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the umpire's reasonable fee. During the appraisal process, an umpire may not solicit or otherwise attempt to procure future professional services.

Section 3. Part XVIII of chapter 468, Florida Statutes, consisting of sections 468.86 through 468.8619, is created to read:

PART XVIII

PROPERTY INSURANCE APPRAISERS

468.86 Property insurance appraiser licensing program; legislative purpose; scope of part.—

(1) The property insurance appraiser licensing program is

created within the Department of Business and Professional Regulation.

(2) The Legislature finds it necessary and in the interest of the public safety and welfare, to prevent damage to real and personal property, to avert economic injury to the residents of this state, and to regulate persons and companies that hold themselves out to the public as qualified to perform as a property insurance appraiser.

(3) This part applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process.

(4) The department may adopt rules to administer the requirements of this part.

468.861 Definitions.—As used in this part, the term:

(1) "Appraisal" means the process of estimating or evaluating actual cash value, the amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and an insured have failed to mutually agree on the value of the loss pursuant to a residential or commercial residential property insurance contract that is required in such contracts for the resolution of a claim dispute by appraisal.

(2) "Competent" means properly licensed, sufficiently qualified, and capable to performing an appraisal.

(3) "Department" means the Department of Business and Professional Regulation.

(4) "Independent" means not subject to control, restriction, modification, and limitation by the appointing party.

(5) "Property insurance appraisal umpire" or "umpire" means a competent, independent, licensed, and impartial third party selected by the licensed appraisers for the insurer and the insured to resolve issues that the licensed appraisers are unable to reach an agreement during the course of the appraisal process pursuant to a residential or commercial property insurance contract that is required to provide for resolution of a claim dispute by appraisal.

(6) "Property insurance loss appraiser" or "appraiser" means a competent, licensed, and independent and impartial third party selected by an insurer or an insured to develop an appraisal for purposes of the appraisal process under a residential or commercial property insurance contract that provides for resolution of a claim dispute by appraisal.

(7) "Uniform application" means the uniform application of the National Association of Insurance Commissioners for nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the department.

468.8611 Fees.—

(1) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education.

The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination, licensing and renewal, inactive status application, and reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(3) The fee for an initial license shall not exceed $250.

(4) The fee for an initial certificate of authorization shall not exceed $250.

(5) The fee for a biennial license renewal shall not exceed $500.

(6) The fee for application for inactive status shall not exceed $125.

(7) The fee for reactivation of an inactive license shall not exceed $250.

(8) The fee for applications from providers of continuing education may not exceed $600.

(9) The fee for fingerprinting shall be included in the department's costs for the background check.

(10) All fees shall be deposited into the Professional Regulation Trust Fund of the Department of Business and Professional Regulation.

468.86115 Application for license as a property insurance appraiser.—

(1) The department shall not issue a license as a property insurance appraiser to any person except upon written application previously filed with the department, with qualification and advance payment of all applicable fees. Any such application shall be made under oath or affirmation of and signed by the applicant. The department shall accept the uniform application for a nonresident property insurance appraiser. The department may adopt revised versions of the uniform application by rule.

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number, residence address, business address, mailing address, contact telephone numbers, including a business telephone number, and e-mail address.

(b) Proof that he or she has completed or is in the process of completing any required prelicensing course.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a professional license by the supervising officials of any state.

(d) Proof that the applicant meets the requirements of licensure as a property insurance appraiser as required under ss. 468.8611 and 468.8612, and this section.

(e) The applicant's gender.

(f) The applicant's native language.

(g) The applicant's highest achieved level of education.

(h) All education requirements that the applicant has completed to qualify as a property insurance appraiser, including the name of the course, the course provider, and the course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency must forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(5) Fees for state and federal fingerprint processing and retention shall be borne by the applicant. The state cost for fingerprint processing is that authorized in s. 943.053(3)(b) for records provided to persons or entities other than those specified as exceptions therein.

(6) Fingerprints submitted to the Department of Law Enforcement pursuant to this section shall be retained by the

Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. The fingerprints shall be submitted to the Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history check. Any arrest record identified shall be reported to the department.

(7) The department shall develop and maintain as a public record a current list of licensed property insurance appraisers.

468.8612 Examinations -

(1) A person desiring to be licensed as a property insurance appraiser must apply to the department after satisfying the examination requirements of this part.

(2) An applicant may practice in this state as a property insurance appraiser if he or she passes the required examination, is of good moral character, and meets one of the following requirements:

(a) The applicant is currently licensed, registered, certified, or approved as an engineer as defined in s. 471.005 or as a retired professional engineer as defined in s. 471.005, and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate

by the department.

(b) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed, registered, certified, or approved as a general contractor, building contractor, or residential contractor as defined in s. 489.105 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(c) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(d) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been a qualified geologist or professional geologist as defined in s. 492.102 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to

construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(e) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been licensed as a certified public accountant as defined in s. 473.302 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(f) The applicant is currently or, within the 2 years immediately preceding the date on which the application is filed with the department, has been a licensed attorney in this state and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(g) The applicant has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate

by the department.

(h) The applicant is a currently licensed adjuster whose license covers all lines of insurance except the life and annuities class. The adjuster's license must include the property and casualty class of insurance. The currently licensed adjuster must be licensed for at least 2 years to qualify for a property insurance appraiser's license.

(i) The applicant has received a minimum of 8 semester hours or 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.

(j) The applicant has successfully completed 40 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the department.

(3) The department shall review and approve courses of study for the continuing education of property insurance appraisers.

(4) The department may not issue a license as a property insurance appraiser to any individual found by it to be untrustworthy or incompetent or who:

(a) Has not filed an application with the department in accordance with s. 485.86115.

(b) Is not a natural person who is at least 18 years of age.

(c) Is not a United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

(d) Has not completed the education, experience, or licensing requirements in this section.

(5) An incomplete application expires 6 months after the date it is received by the department.

(6) An applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

468.8613 Licensure.—

(1) The department shall license any applicant who the department certifies has completed the requirements of ss. 468.8611, 468.86115, and 468.8612.

(2) The department shall not issue a license by endorsement to any applicant for a property insurance appraiser license who is under investigation in another state for any act that would constitute a violation of this part until such time that the investigation is complete and disciplinary proceedings have been terminated.

468.8614 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8615.

(2) The department shall adopt rules establishing a

procedure for the biennial renewal of licenses.

468.8615 Continuing education.—

(1) The department may not renew a license until the licensee submits satisfactory proof to the department that, during the 2 years before his or her application for renewal, the licensee completed at least 30 hours of continuing education in addition to 5 hours of ethics. Criteria and course content shall be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total required hours, for failure to complete the required hours for renewal by the end of the renewal period.

(3) Each appraiser course provider, instructor, and classroom course must be approved by and registered with the department before prelicensure courses for property insurance appraisers may be offered. Each classroom course must include a written examination at the conclusion of the course and must cover all of the material contained in the course. A student may not receive credit for the course unless the student achieves a grade of at least 75 on the examination.

(4) The department shall adopt rules establishing:

(a) Standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and courses. The standards must be designed to ensure that instructors have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure

requirements of this part.

(b) A process for determining compliance with the prelicensure requirements of this part.

The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements of this part.

(5) Approval to teach prescribed or approved appraisal courses does not entitle the instructor to teach any courses outside the scope of this part.

468.8616 Inactive license.—

(1) A licensee may request that his or her license be placed on inactive status by filing an application with the department.

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition for reactivation of an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

(3) The department shall adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses. The department shall prescribe by rule a fee not to exceed $250 for the reactivation of an inactive license and a fee not to exceed $250 for the renewal of an inactive license.

468.8617 Certification of partnerships, corporations, and other business entities.—The practice of or the offer to

practice as a property insurance appraiser by licensees through a partnership, corporation, or other business entity offering property insurance appraiser services to the public, or by a partnership, corporation, or other business entity through licensees under this part as agents, employees, officers, or partners is permitted subject to the provisions of this part. This section does not allow a corporation or other business entity to hold a license to practice property insurance appraiser services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of it agents, employees, or officers by reason of its compliance with this section. An individual practicing as a property insurance appraiser is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a partnership, corporation, or other business entity.

468.8618 Grounds for compulsory refusal, suspension, or revocation of an appraiser's license.—The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, property insurance appraiser or licensee and shall suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department any examination required under this act.

(4) That the license or appointment was willfully used, or will be used, to circumvent any of the requirements or prohibitions of this code.

(5) Demonstrated a lack of fitness or trustworthiness to engage as a property insurance appraiser.

(6) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this act.

(9) Having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(10) Violated a duty imposed upon her or him by law or by

the terms of a contract, whether written, oral, expressed, or implied, in an appraisal; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to a finding that a licensee has committed a violation of this subsection that the victim or intended victim of the misconduct has sustained no damage or loss, that the damage or loss has been settled and paid after the discovery of misconduct, or that such victim or intended victim was a customer or a person in a confidential relationship with the licensee or was an identified member of the general public.

(11) Had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against; has had his or her registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(12)(a) Made or filed a report or record, written or oral, which the licensee knows to be false;

(b) Has willfully failed to file a report or record

required by state or federal law;

(c) Has willfully impeded or obstructed such filing; or

(d) Has induced another person to impede or obstruct such filing.

(13) Accepted an appointment as an appraiser if the appointment is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the services of the appraiser is contingent upon the opinion, conclusion, or valuation reached by the appraiser.

468.86185 Grounds for discretionary denial, suspension, or revocation of an appraiser's license.-The department may deny an application for and suspend, revoke, or refuse to renew or continue a license as a property insurance appraiser if the applicant or licensee has:

(1) Failed to timely communicate with the opposing party's appraiser without good cause.

(2) Failed or refused to exercise reasonable diligence in submitting recommendations to the opposing party's appraiser.

(3) Violated any ethical standard for property insurance appraisers set forth in s. 468.8619.

(4) Failed to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

(5) Failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which he or she operates as a property

insurance appraiser.

468.8619 Ethical standards for property insurance appraisers.—

(1) CONFIDENTIALITY.—An appraiser shall maintain confidentiality of all information revealed during an appraisal except to the party that hired the appraiser and except where disclosure is required by law.

(2) RECORDKEEPING.—An appraiser shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information when materials are used for research, training, or statistical compilations.

(3) FEES AND EXPENSES.—Fees charged for appraisal services shall be reasonable and consistent with the nature of the case. An appraiser shall be guided by the following in determining fees:

(a) All charges for services as an appraiser based on time may not exceed actual time spent or allocated.

(b) Charges for costs shall be for those actually incurred.

(4) MAINTENANCE OF RECORDS.—An appraiser shall maintain records necessary to support charges for services and expenses, and upon request shall provide an accounting of all applicable charges to the parties. An appraiser licensed under this part shall retain for at least 5 years original or true copies of any contracts engaging the appraiser's services, appraisal reports, and supporting data assembled and formulated by the appraiser in

preparing appraisal reports. The period for retaining the records applicable to each engagement starts on the date of the submission of the appraisal report to the client. The records must be made available by the appraiser for inspection and copying by the department upon reasonable notice to the appraiser. If an appraisal has been the subject of, or has been admitted as evidence in, a lawsuit, reports, and records the appraisal must be retained for at least 2 years after the date that the trial ends.

(5) ADVERTISING.—An appraiser may not engage in marketing practices that contain false or misleading information. An appraiser shall ensure that any advertisements of the appraiser's qualifications, services to be rendered, or the appraisal process are accurate and honest. An appraiser may not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(6) INTEGRITY AND IMPARTIALITY.—An appraiser may not accept any engagement, provide any service, or perform any act that would compromise the appraiser's integrity or impartiality.

(a) An appraiser may not accept an appointment unless he or she can:

1. Serve impartially;

2. Serve independently from the party appointing him or her;

3. Serve competently; and

4. Be available to promptly commence the appraisal, and

thereafter devote the time and attention to its completion in a manner expected by all involved parties.

(b) An appraiser shall conduct the appraisal process in a manner that advances the fair and efficient resolution of the matters submitted for decision. A licensed appraiser shall make all reasonable efforts to prevent delays in the appraisal process, the harassment of parties or other participants, or other abuse or disruption of the appraisal process.

(c) Once a licensed appraiser has accepted an appointment, the appraiser may not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue.

(d) The licensed appraiser shall, after careful deliberation, decide all issues submitted for determination and no other issues. A licensed appraiser shall decide all matters justly, exercising independent judgment, and may not allow outside pressure to affect the decision. An appraiser may not delegate the duty to decide to any other person.

(7) SKILL AND EXPERIENCE.—An appraiser shall decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the appraisal are beyond the appraiser's skill or experience.

(8) GIFTS AND SOLICITATION.—An appraiser may not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the appraiser's reasonable fee. During the appraisal process, an appraiser may not solicit or

otherwise attempt to procure future professional services.

(9) COMMUNICATIONS WITH PARTIES.—

(a) If an agreement of the parties establishes the manner or content of the communications between the appraisers, the parties and the umpire, the appraisers shall abide by such agreement. In the absence of agreement, an appraiser may not discuss a proceeding with any party or with the umpire in the absence of any other party, except in the following circumstances:

1. If the appointment of the appraiser or umpire is being considered, the prospective appraiser or umpire may ask about the identities of the parties, counsel, and the general nature of the case, and may respond to inquiries from a party, its counsel or an umpire designed to determine his or her suitability and availability for the appointment;

2. To consult with the party who appointed the appraiser concerning the selection of a neutral umpire;

3. To make arrangements for any compensation to be paid by the party who appointed the appraiser; or

4. To make arrangements for obtaining materials and inspection of the property with the party who appointed the appraiser. Such communication is limited to scheduling and the exchange of materials.

(b) There may be no communications whereby a party dictates to an appraiser what the result of the proceedings must be, what matters or elements may be included or considered by

the appraiser, or what actions the appraiser may take.

Section 4. Effective July 1, 2015, for the 2015-2016 fiscal year, the sums of $605,874 in recurring funds and $59,053 in nonrecurring funds from the Professional Regulation Trust Fund are appropriated to the Department of Business and Professional Regulation, and four full-time equivalent positions and associated salary rate of 212,315 are authorized, for the purpose of implementing this act.

Section 5. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect January 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 765 Household Moving Services
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Goodson
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 798

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

SUMMARY ANALYSIS

Chapter 507, F.S., establishes laws pertaining to the loading, transportation or shipment, unloading, and affiliated storage of household goods as part of household moves, and addresses household moving practices in the state that are consistent with federal law governing consumer protection. The chapter applies to the operations of any mover or moving broker engaged in the *intrastate* transportation or shipment of household goods originating and terminating in the state and does not apply to shipments contracted by the U.S., the state, or any local government or political subdivision of the state.

The bill makes the following major changes to chapter 507, F.S.:

- Provides definitions for "additional services," "impracticable operations," and "personal laborer" and revises the definition of mover, clarifying that a mover does not include a personal laborer;
- Provides that the Department of Agricultural and Consumer Services (DACS) may immediately suspend a mover's registration or eligibility for registration if a mover does not maintain insurance coverage;
- Provides that a mover must offer valuation coverage for cost of repair or replacement of goods and may not limit its liability for the loss or damage of household goods to a specified valuation rate;
- Requires a mover to conduct a physical survey of the household goods to be moved unless the survey is waived by the shipper;
- Requires a mover to provide a binding estimate to the shipper prior to executing a contract for service, which details the total charges for moving the household goods, unless waived by the shipper;
- Requires DACS to prepare a publication of rights, responsibilities, and remedies for movers and shippers under the chapter and requires that a mover provide a prospective shipper the published summary of rights and responsibilities and an accurate binding estimate;
- Requires a mover to relinquish household goods on the agreed upon delivery date;
- Provides a maximum allowable charge for moving goods and provides time-frames in which payments should be submitted to the mover;
- Provides that a mover may collect partial payment if part of the shipment of household goods is lost or destroyed and outlines shipper's rights in the instance of partial or total loss of household goods;
- Provides that DACS can immediately suspend a registration or the processing of an application for registration if the registrant or applicant is formally charged with certain crimes; and
- Provides rule-making authority to DACS.

The bill has no fiscal impact on state and local governments and a fiscal impact on the private sector. See Fiscal Analysis & Economic Impact Statement for more details.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 507, F.S., establishes laws pertaining to the loading, transportation or shipment, unloading, and affiliated storage of household goods as part of household moves, and addresses household moving practices in the state that are consistent with federal law governing consumer protection. The chapter applies to the operations of any mover or moving broker engaged in the *intrastate* transportation or shipment of household goods originating and terminating in the state and does not apply to shipments contracted by the U.S., the state, or any local government or political subdivision of the state. Legislative intent provides that "the chapter is intended to secure the satisfaction and confidence of shippers and members of the public when using a mover."[1]

Section 507.01, F.S., provides the following definitions:

- "Household goods" or "goods" means personal effects or other personal property commonly found in a home, personal residence, or other dwelling, including, but not limited to, household furniture. The term does not include freight or personal property moving to or from a factory, store, or other place of business.
- "Household move" or "move" means the loading of household goods into a vehicle, moving container, or other mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations, regardless of whether the mover temporarily stores the goods while en route between the originating and terminating locations:
    - From one dwelling to another dwelling;
    - From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or
    - From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling.
- "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service.
- "Moving broker" or "broker" means a person who, for compensation, arranges for another person to load, transport or ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover by telephone, postal or electronic mail, Internet website, or other means.
- "Shipper" means a person who uses the services of a mover to transport or ship household goods as part of a household move.

Section 507.03, F.S., requires movers and moving brokers engaged in intrastate moving to register with the Department of Agriculture and Consumer Services (DACS) biennially (every 2 years). The registration fee is $300 per year for each mover or moving broker. At the time of application or renewal, a $600 fee is due for the two-year registration.[2] There are approximately 900 movers and 12 moving brokers in the state.[3]

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[1] s. 507.02, F.S.
[2] s. 507.03, F.S.
[3] Email from Jonathan Rees, Deputy Director of Legislative Affairs, Department of Agriculture and Consumer Services, RE: the moving industry in the state (Mar. 5, 2015).

A Certificate of Insurance must be provided by the mover showing proof of proper coverage. Insurance and surety must be issued by a company authorized to transact business in this state. The DACS shall be named as a certificate holder and must be notified at least 10 days before cancellation of insurance coverage.[4] A copy of the policy, declarations page or insurance card will not be accepted.

Coverage must include:

- Liability insurance coverage for the loss or damage of household goods – not less than $10,000 per shipment.
    - In lieu of maintaining the liability insurance, a mover operating two or fewer trucks is authorized, and a moving broker is required, to file with DACS, a performance bond or certificate of deposit in the amount of $25,000.[5]
- Motor vehicle coverage, including bodily injury and property damage liability coverage in the following minimum amounts:
    - $50,000 per occurrence for a commercial motor vehicle with a gross weight of less than 35,000 pounds.
    - $100,000 per occurrence for a commercial motor vehicle with a gross weight of more than 35,000 pounds, but less than 44,000 pounds.
    - $300,000 per occurrence for a commercial motor vehicle with a gross weight of 44,000 pounds or more.[6]

A mover may offer valuation coverage to compensate a shipper if there is loss or damage of the shipper's household goods that occurs during a household move. A mover may not limit their liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. If a mover limits their liability to less than that rate, the provision of a contract for moving services is void. If a mover limits its liability for a shipper's goods, the mover must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage.[7]

Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:

- The name, telephone number, and physical address where the mover's employees are available during normal business hours.
- The date the contract or estimate is prepared and any proposed date of the move.
- The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.
- The name, telephone number, and physical address of any location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper.
- An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods.
- Acceptable forms of payment. A mover shall accept a minimum of two of the three following forms of payment:
    - Cash, cashier's check, money order, or traveler's check;

[4] s. 507.04, F.S.
[5] s. 507.04(1), F.S.
[6] s. 507.04(2), F.S.
[7] s. 507.04(4) and (5), F.S.

- Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or
- Valid credit card, which shall include, but not be limited to, Visa or MasterCard.[8]

There is no requirement that a mover tender household goods for delivery on the agreed upon delivery date.

The department has no publication that includes a summary of the rights and responsibilities of and remedies available to movers and shippers.[9] There is no provision in the statute for movers to collect a partial payment from a shipper if part of the shipment of household goods is lost or destroyed. Administrative remedies and penalties are: issuing notices of noncompliance; imposing an administrative fine; directing person/business to cease and desist specified activities; refusing to register, revoke, or suspend a registration, or place a registrant on probation.

Effects of Proposed Changes

Legislative intent for the chapter is expanded to include the provision of "consistency and transparency in moving practices" in addition to securing the satisfaction and confidence of shippers and members of the public when using a mover.

The bill adds definitions for the following terms:

- "Additional services" means any additional transportation of household goods that is performed by a mover, is not specifically included in a binding estimate or contract, and results in a charge to the shipper.
- "Impracticable operations" means conditions arising after the execution of a contract for household moving services that make it impractical for a mover to perform pickup or delivery services for a household move.
- "Personal laborer" means an individual hired directly by the shipper to assist in the loading or unloading of the shipper's own household goods. The term does not include any individual who has contracted with or is compensated by a third-party or whose services are brokered as part of a household move.

The definition of "mover" is clarified to reflect that a personal laborer is not a mover.

"Liability Insurance" is retitled "cargo liability insurance" throughout the section. Consequences for failing to maintain insurance coverage are moved from s. 507.04(1), F.S., to s. 507.04(3), F.S. This change does not remove the insurance requirement; it expands it by moving it to a section that refers to both cargo liability insurance and motor vehicle insurance requirements.

A moving company's valuation coverage protects a shipper's goods from damage. Currently, a mover may offer valuation coverage to compensate a shipper if there is loss or damage of the shipper's household goods that occurs during a household move. The bill changes valuation coverage from an optional offering to a required offering for the costs of repair or replacement of goods, unless waived or amended by the shipper by signed or electronic acknowledgment in the contract for service. Further, the mover must disclose the terms of the coverage, including any deductibles, to the shipper in writing within the binding estimate and again when the contract for services is executed and before any moving services are provided, and the disclosure must inform the shipper of the cost of the valuation coverage, if any.

The bill requires the mover to perform a physical survey of the goods to be moved and to provide an accurate binding estimate of the moving cost to the shipper. In other instances, a physical survey may

[8] s. 507.05, F.S.
[9] *Id.*

be waived if the shipper elects to do so; however, this waiver must be documented in writing, signed by the shipper, and retained by the mover as an addendum to the contract. Before executing a contract for service, and at least 48 hours before the scheduled time and date of a shipment, a mover must provide a binding estimate of the total charges including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services. The shipper may waive the binding estimate if done so at least 48 hours before the household goods are loaded. The shipper may also waive the 48-hour period if the move begins within 48 hours after the shipper's initial contact with the mover. The binding estimate must be signed by the mover and the shipper.

Movers can amend the estimates preceding the scheduled loading of goods if the shipper has requested additional services. Further provisions outline what must be included within the binding estimates and exclusions for binding estimates and addendums to the original contract.

The bill requires DACS to prepare a summary of the rights and responsibilities of, and remedies, available to movers and shippers. The publication must include a statement that the mover's failure to relinquish household goods constitutes a third degree felony and that any violation of chapter 507 constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act. The publication must also include a notice to the shipper about the potential risks of shipping sentimental or family heirloom items. The shipper is required to acknowledge in writing or electronically receipt of the publication.

Prior to executing the contract, the bill requires the mover to provide to the shipper the publication and a "concise, easy-to-read, and accurate binding estimate."

The bill requires a mover to relinquish goods on the agreed delivery date or within the time frame specified in the contract, unless waived by the shipper. If a mover cannot deliver the household goods within the agreed upon time frame, the mover must notify the shipper of the delay and provide an amended date or timeframe of pickup or delivery of goods "in a timely manner."

The bill provides that movers may only charge the amount of the binding estimate, unless waived by the shipper, plus charges for any additional services requested or agreed to in writing by the shipper after the contract was issued and for impracticable operations, if applicable.

Any payment that is not collected upon delivery must be billed within 15 days of delivery. Movers may bill shippers for late fees should the shipper fail to make their payment within 30 days of delivery. The bill does not provide guidelines or limits on the late fees that can be charged by the mover.

Under the bill, movers can collect a partial payment from a shipper if part of the shipment of household goods is lost or destroyed. This could include:

- A prorated percentage of the binding estimate;
- Charges for additional services requested by the shipper after the contract was issued;
- Charges for impracticable operations (not to exceed 15% of all other charges due at delivery); and
- Any specific valuation rate charges due, if applicable.

The bill provides that the mover may bill and collect from the shipper any remaining charges not collected at the time of delivery, except if the loss or destruction of the household goods was the fault of the shipper.

It is the responsibility of the mover to determine what amount of the household goods were lost or destroyed during transit. If there was a total loss or destruction, the mover may not request freight charges from the shipper, but can collect a specific valuation rate charge due. If the total loss or destruction was the fault of the shipper, the total loss provisions are not applicable. Further language outlines shipper's rights in regard to collection for losses.

Violation language is amended in the bill and administrative penalties are revised to include that DACS shall immediately suspend a registration or the processing of an application for registration if the registrant or applicant is formally charged with certain crimes, including fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property.

B. SECTION DIRECTORY:

Section 1. Amends s. 507.01, F.S., relating to definitions.

Section 2. Amends s. 507.02, F.S., relating to legislative intent.

Section 3. Amends s. 507.04, F.S., relating to required insurance coverages, liability limitations, and valuation coverage.

Section 4. Amends s. 507.05, F.S., relating to physical surveys, binding estimates, and contracts for service.

Section 5. Creates s. 507.054, F.S., relating to a publication of rights and responsibilities.

Section 6. Creates s. 507.055, F.S., relating to disclosures.

Section 7. Amends s. 507.06. F.S., relating to delivery and storage of household goods.

Section 8. Creates s. 507.065, F.S., relating to payment.

Section 9. Creates s. 507.066, F.S., relating to collection for losses.

Section 10. Amends s. 507.07, F.S., relating to violations.

Section 11. Amends s. 507.09, F.S., relating to administrative remedies and penalties.

Section 12. Amends s. 507.11, F.S., relating to criminal penalties.

Section 13. Creates s. 507.14, F.S., relating to rulemaking.

Section 14. Provides an effective date of July 1, 2015.

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:

The bill changes valuation coverage from an optional offering to a required offering and requires the mover to offer coverage for cost of repair or replacement of goods, unless waived or amended by the shipper.

The bill specifies that movers may only charge the amount of the binding estimate, plus any additional services requested or agreed to in writing.

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:

DACS is directed to adopt rules to administer the chapter.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 473-478 authorize a mover to bill a shipper for late fees should the shipper fail to make their payment within 30 days of delivery; however, the bill does not provide guidelines or limits on the late fees that can be charged by the mover.

Lines 498-502 provide that the mover may bill and collect from the shipper any remaining charges not collected at the time of delivery, but makes an exception for this billing if the loss or destruction of the household goods was the fault of the shipper. Contrarily, lines 506-512 provide that a mover may not collect charges when a shipment is lost or destroyed in transit, unless the loss or destruction was the fault of the shipper.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 7, 2015, the Agriculture & Natural Resources Appropriations Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment:

- Adds definitions.
- Requires a mover to offer valuation coverage for cost of repair or replacement of goods unless waived or amended by shipper.
- Removes the requirement that a mover must annually file a tariff with DACS.
- Specifies that a mover must conduct a physical survey, regardless of location.
- Specifies that a shipper may waive the binding estimate and/or the 48-hour period before scheduled shipment.
- Removes the one-time fee for providing a binding estimate.

- Removes a third degree felony for a mover that does not relinquish a shipper's household goods as ordered by law enforcement.

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

A bill to be entitled

An act relating to household moving services; amending s. 507.01, F.S.; revising and defining terms; amending s. 507.02, F.S.; clarifying intent; amending s. 507.04, F.S.; removing a prohibition that a mover may not limit its liability for the loss or damage of household goods to a specified valuation rate; removing a requirement that a mover disclose a liability limitation when the mover limits its liability for a shipper's goods; requiring a mover to offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move; requiring the valuation coverage to indemnify the shipper for at least the cost of repair or replacement of the goods unless waived or amended by the shipper; authorizing the shipper to waive or amend the valuation coverage; requiring that the waiver be made by signed or electronic acknowledgment in the contract for service; revising the time at which the mover must disclose the terms of the coverage, including any deductibles, to the shipper in writing; revising the information that the disclosure must provide to the shipper; amending s. 507.05, F.S.; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived in

writing by the shipper; requiring specified content to be included in the binding estimate; authorizing a shipper to waive the binding estimate in certain circumstances; requiring the mover and shipper to sign the estimate; requiring the mover to provide the shipper with a copy of the estimate at the time of signature; providing that a binding estimate may only be amended under certain circumstances; authorizing a mover to charge more than the binding estimate in certain circumstances; requiring a mover to allow a shipper to consider whether additional services are needed; requiring a mover to retain a copy of the binding estimate for a specified period; requiring a mover to provide a contract for service to the shipper before providing moving or accessorial services; requiring a driver to have possession of the contract before leaving the point of origin; requiring a mover to retain a contract for service for a specified period; creating s. 507.054, F.S.; requiring the department to prepare a publication that summarizes the rights and responsibilities of, and remedies available to, movers and shippers; requiring the publication to meet certain specifications; requiring the shipper to acknowledge receipt of the publication; creating s. 507.055, F.S.; requiring a mover to provide certain disclosures to a prospective shipper;

amending s. 507.06, F.S.; requiring a mover to tender household goods for delivery on the agreed upon delivery date or within a specified period unless waived by the shipper; requiring a mover to notify and provide certain information to a shipper if the mover is unable to perform delivery on the agreed upon date or during the specified period; creating s. 507.065, F.S.; providing a maximum amount that a mover may charge a shipper; requiring a mover to bill a shipper for certain amounts within a specified period; creating s. 507.066, F.S.; specifying the amount of payment that the mover may collect upon delivery of partially lost or destroyed household goods; requiring a mover to determine the proportion of lost or destroyed household goods; prohibiting a mover from collecting or requiring a shipper to pay any charges other than specific valuation rate charges if a household goods shipment is totally lost or destroyed in transit; amending s. 507.07, F.S.; providing that it is a violation of ch. 507, F.S., to fail to comply with specified provisions; providing that it is a violation of ch. 507, F.S., to increase the contracted cost for moving services in certain circumstances; conforming a provision to a change made by the act; amending s. 507.09, F.S.; requiring the department, upon verification by certain entities, to immediately

suspend a registration or the processing of an application for a registration in certain circumstances; amending s. 507.11, F.S.; providing criminal penalties; creating s. 507.14, F.S.; requiring the department to adopt rules; providing an effective date.

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

Section 1. Subsections (2) through (5) of section 507.01, Florida Statutes, are renumbered as subsections (3) through (6), respectively, subsections (9) through (11) are renumbered as subsections (10) through (12), respectively, subsections (12) and (13) are renumbered as subsections (14) and (15), respectively, present subsections (6) and (9) are amended, and new subsections (2), (9), and (13) are added to that section, to read:

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

(2) "Additional services" means any additional transportation of household goods that is performed by a mover, is not specifically included in a binding estimate or contract, and results in a charge to the shipper.

~~(6) "Estimate" means a written document that sets forth the total costs and describes the basis of those costs, relating to a shipper's household move, including, but not limited to, the loading, transportation or shipment, and unloading of~~

~~household goods and accessorial services.~~

(9) "Impracticable operations" means conditions arising after the execution of a contract for household moving services that make it impractical for a mover to perform pickup or delivery services for a household move.

(10)~~(9)~~ "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that, or a personal laborer who, does not advertise ~~itself~~ as a mover or moving service.

(13) "Personal laborer" means an individual hired directly by the shipper to assist in the loading or unloading of the shipper's own household goods. The term does not include any individual who has contracted with or is compensated by a third-party or whose services are brokered as part of a household move.

Section 2. Subsection (3) of section 507.02, Florida Statutes, is amended to read:

507.02 Construction; intent; application.—

(3) This chapter is intended to provide consistency and transparency in moving practices and to secure the satisfaction and confidence of shippers and members of the public when using a mover.

Section 3. Subsections (1), (3), (4), and (5) of section 507.04, Florida Statutes, are amended to read:

507.04 Required insurance coverages; liability limitations; valuation coverage.—

(1) CARGO LIABILITY INSURANCE.—

(a)1. Except as provided in paragraph (b), each mover operating in this state must maintain current and valid cargo liability insurance coverage of at least $10,000 per shipment for the loss or damage of household goods resulting from the negligence of the mover or its employees or agents.

2. The mover must provide the department with evidence of liability insurance coverage before the mover is registered with the department under s. 507.03. All insurance coverage maintained by a mover must remain in effect throughout the mover's registration period. ~~A mover's failure to maintain insurance coverage in accordance with this paragraph constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.~~

(b) A mover that operates two or fewer vehicles, in lieu of maintaining the cargo liability insurance coverage required

under paragraph (a), may, and each moving broker must, maintain one of the following alternative coverages:

1. A performance bond in the amount of $25,000, for which the surety of the bond must be a surety company authorized to conduct business in this state; or

2. A certificate of deposit in a Florida banking institution in the amount of $25,000.

The original bond or certificate of deposit must be filed with the department and must designate the department as the sole beneficiary. The department must use the bond or certificate of deposit exclusively for the payment of claims to consumers who are injured by the fraud, misrepresentation, breach of contract, misfeasance, malfeasance, or financial failure of the mover or moving broker or by a violation of this chapter by the mover or broker. Liability for these injuries may be determined in an administrative proceeding of the department or through a civil action in a court of competent jurisdiction. However, claims against the bond or certificate of deposit must only be paid, in amounts not to exceed the determined liability for these injuries, by order of the department in an administrative proceeding. The bond or certificate of deposit is subject to successive claims, but the aggregate amount of these claims may not exceed the amount of the bond or certificate of deposit.

(3) INSURANCE COVERAGES.—The insurance coverages required under paragraph (1)(a) and subsection (2) must be issued by an

insurance company or carrier licensed to transact business in this state under the Florida Insurance Code as designated in s. 624.01. The department shall require a mover to present a certificate of insurance of the required coverages before issuance or renewal of a registration certificate under s. 507.03. The department shall be named as a certificateholder in the certificate and must be notified at least 10 days before cancellation of insurance coverage. A mover's failure to maintain insurance coverage constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.

(4) ~~LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not limit its liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. A provision of a contract for moving services is void if the provision limits a mover's liability to a valuation rate that is less than the minimum rate under this subsection. If a mover limits its liability for a shipper's goods, the mover~~

~~must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage under subsection (5).~~

~~(5)~~ VALUATION COVERAGE.—A mover shall ~~may~~ offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move. ~~If a mover offers valuation coverage,~~ The coverage must indemnify the shipper for at least the cost of repair or replacement of the goods, unless waived or amended by the shipper. The shipper may waive or amend the valuation coverage. Such waiver must be made by signed or electronic acknowledgment in the contract for service ~~minimum valuation rate required under subsection (4)~~. The mover must disclose the terms of the coverage, including any deductibles, to the shipper in writing within ~~at the time that~~ the binding estimate and again when the contract for services is ~~are~~ executed and before any moving or accessorial services are provided. The disclosure must inform the shipper of the cost of the valuation coverage, if any ~~the valuation rate of the coverage, and the opportunity to reject the coverage~~. ~~If valuation coverage compensates a shipper for at least the minimum valuation rate required under subsection (4), the coverage satisfies the mover's liability for the minimum valuation rate.~~

Section 4. Section 507.05, Florida Statutes, is amended to read:

507.05 Physical surveys, binding estimates, and contracts for service. ~~Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:~~

(1) PHYSICAL SURVEY.—A mover must conduct a physical survey of the household goods to be moved and provide the prospective shipper with a binding estimate of the cost of the move.

(2) WAIVER OF SURVEY.—A shipper may elect to waive the physical survey, and such waiver must be in writing and signed by the shipper before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for service.

(3) BINDING ESTIMATE.—Before executing a contract for service for a household move, and at least 48 hours before the scheduled time and date of a shipment of household goods, a mover must provide a binding estimate of the total charges, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services. The binding estimate shall be based on a physical survey conducted pursuant to subsection (1), unless waived pursuant to subsection (2).

(a) The shipper may waive the binding estimate if the

waiver is made by signed or electronic acknowledgment in the contract for service at least 48 hours before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for service. To be enforceable, a waiver executed under this paragraph must, at a minimum, include a statement in uppercase type that is at least 5 points larger than, and clearly distinguishable from, the rest of the text of the waiver or release containing the statement. The statement shall be determined by rule of the department, must be used by all movers, and must include a delineation of the specific rights that a shipper may lose by waiving the binding estimate.

(b) The shipper may also waive the 48-hour period if the requested moving services begin within 48 hours after the shipper's initial contact with the mover contracted to perform the moving services.

(c) At a minimum, the binding estimate must include all of the following:

1. The table of measures used by the mover or the mover's agent in preparing the estimate.

2. The date the estimate was prepared and the proposed date of the move, if any.

3. An itemized breakdown and description of services, and the total cost to the shipper of loading, transporting or shipping, unloading, and accessorial services.

4. A statement that the estimate is binding on the mover and the shipper and that the charges shown apply only to those

services specifically identified in the estimate.

5. Identification of acceptable forms of payment.

(d) The binding estimate must be signed by the mover and the shipper, and a copy must be provided to the shipper by the mover at the time that the estimate is signed.

(e) A binding estimate may only be amended by the mover before the scheduled loading of household goods for shipment when the shipper has requested additional services of the mover not previously disclosed in the original binding estimate, or upon mutual agreement of the mover and the shipper. Once a mover begins to load the household goods for a move, failure to execute a new binding estimate signifies the mover has reaffirmed the original binding estimate.

(f) A mover may not collect more than the amount of the binding estimate, unless:

1. The shipper waives receipt of a binding estimate under this subsection.

2. The shipper tenders additional household goods, requests additional services, or requires services that are not specifically included in the binding estimate, in which case the mover is not required to honor the estimate. If, despite the addition of household goods or the need for additional services, the mover chooses to perform the move, it must, before loading the household goods, inform the shipper of the associated charges in writing. The mover may require full payment at the destination for the costs associated with the additional

requested services and the full amount of the original binding estimate.

3. Upon issuance of the contract for services, the mover advises the shipper, in advance of performing additional services, including accessorial services, that such services are essential to properly performing the move. The mover must allow the shipper at least 1 hour to determine whether to authorize the additional services.

a. If the shipper agrees to pay for the additional services, the mover must execute a written addendum to the contract for services, which must be signed by the shipper. The addendum may be sent to the shipper by facsimile, e-mail, overnight courier, or certified mail, with return receipt requested. The mover must bill the shipper for the agreed upon additional services within 15 days after the delivery of those additional services pursuant to s. 507.06.

b. If the shipper does not agree to pay for the additional services, the mover may perform and, pursuant to s. 507.06, bill the shipper for those additional services necessary to complete the delivery.

(g) A mover shall retain a copy of the binding estimate for each move performed for at least 1 year after its preparation date as an attachment to the contract for service.

(4) CONTRACT FOR SERVICE.—Before providing any moving or accessorial services, a mover must provide a contract for service to the shipper, which the shipper must sign and date.

(a) At a minimum, the contract for service must include:

1.~~(1)~~ The name, telephone number, and physical address where the mover's employees are available during normal business hours.

2.~~(2)~~ The date the contract was ~~or estimate is~~ prepared and the ~~any~~ proposed date of the move, if any.

3.~~(3)~~ The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.

4.~~(4)~~ The name, telephone number, and physical address of any location where the household goods will be held pending further transportation, including situations in which ~~where~~ the mover retains possession of household goods pending resolution of a fee dispute with the shipper.

5.~~(5)~~ A binding estimate provided in accordance with subsection (3) ~~An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods~~.

6. The total charges owed by the shipper based on the binding estimate and the terms and conditions for their payment, including any required minimum payment.

7. If the household goods are transported under an agreement to collect payment upon delivery, the maximum payment that the mover may demand at the time of delivery.

8.~~(6)~~ Acceptable forms of payment, which must be clearly

and conspicuously disclosed to the shipper on the binding estimate and the contract for service. A mover must ~~shall~~ accept at least ~~a minimum of~~ two of the three following forms of payment:

a.~~(a)~~ Cash, cashier's check, money order, or traveler's check;

b.~~(b)~~ Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

c.~~(c)~~ Valid credit card, which shall include, but not be limited to, Visa or MasterCard. ~~A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept, including the forms of payment described in paragraphs (a)-(c).~~

(b) Each addendum to the contract for service is an integral part of the contract.

(c) A copy of the contract for service must accompany the household goods whenever they are in the mover's or the mover's agent's possession. Before a vehicle that is being used for the move leaves the point of origin, the driver responsible for the move must have the contract for service in his or her possession.

(d) A mover shall retain a contract for service for each move it performs for at least 1 year after the date the contract for service was signed.

Section 5. Section 507.054, Florida Statutes, is created

to read:

507.054 Publication.—

(1) The department shall prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to, movers and shippers under this chapter. The publication must include a statement that the mover's failure to relinquish household goods as required by this chapter constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; that any other violation of this chapter constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and that any violation of this chapter constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act. The publication must also include a notice to the shipper about the potential risks of shipping sentimental or family heirloom items.

(2) A mover may provide exact copies of the department's publication to shippers or may customize the color, design, and dimension of the front and back covers of the standard department publication. If the mover customizes the publication, the customized publication must include the content specified in subsection (1) and meet the following requirements:

(a) The font size used must be at least 10 points, with the exception that the following must appear prominently on the front cover in at least 12-point boldface type: "Your Rights and Responsibilities When You Move. Furnished by Your Mover, as

Required by Florida Law."

(b) The size of the publication must be at least 36 square inches.

(3) The shipper must acknowledge receipt of the publication by signed or electronic acknowledgement in the contract for service.

Section 6. Section 507.055, Florida Statutes, is created to read:

507.055 Required disclosure and acknowledgment of rights and remedies.—Before executing a contract for service for a move, a mover must provide to a prospective shipper the publication required under s. 507.054 and a concise, easy-to-read, and accurate binding estimate required under s. 507.05(3).

Section 7. Subsections (1) and (3) of section 507.06, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

507.06 Delivery and storage of household goods.—

(1) On the agreed upon delivery date or within the timeframe specified in the contract for service, a mover must relinquish household goods to a shipper and must place the household goods inside a shipper's dwelling or, if directed by the shipper, inside a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent, unless the shipper has not tendered payment in accordance with s. 507.065 or s. 507.066 ~~in the amount specified in a written contract or estimate signed and dated by the shipper~~. This requirement may

be waived by the shipper. A mover may not, under any circumstances, refuse to relinquish prescription medicines and household goods for use by children, including children's furniture, clothing, or toys~~, under any circumstances~~.

(3) A mover that lawfully fails to relinquish a shipper's household goods may place the goods in storage until payment in accordance with s. 507.065 or s. 507.066 is tendered; however, the mover must notify the shipper of the location where the goods are stored and the amount due within 5 days after receipt of a written request for that information from the shipper, which request must include the address where the shipper may receive the notice. A mover may not require a prospective shipper to waive any rights or requirements under this section.

(4) If a mover becomes aware that it cannot perform the pickup or the delivery of household goods on the date agreed upon or during the timeframe specified in the contract for service due to unanticipated circumstances, the mover shall notify the shipper of the delay and advise the shipper of the amended date or timeframe within which the mover expects to pick up or deliver the household goods in a timely manner.

Section 8. Section 507.065, Florida Statutes, is created to read:

507.065 Payment.—

(1) Except as provided in s. 507.05(3), the maximum amount that a mover may charge before relinquishing household goods to a shipper is the exact amount of the binding estimate, unless

waived by the shipper, plus charges for any additional services requested or agreed to in writing by the shipper after the contract for service was issued and for impracticable operations, if applicable.

(2) A mover must bill a shipper for any charges assessed under this chapter that are not collected upon delivery of household goods at their destination within 15 days after such delivery. A mover may assess a late fee for any uncollected charges if the shipper fails to make payment within 30 days after receipt of the bill.

Section 9. Section 507.066, Florida Statutes, is created to read:

507.066 Collection for losses.—

(1) PARTIAL LOSSES.—A mover may collect an adjusted payment from a shipper if part of a shipment of household goods is lost or destroyed.

(a) A mover may collect the following at delivery:

1. A prorated percentage of the binding estimate. The prorated percentage must equal the percentage of the weight of the portion of the household goods delivered relative to the total weight of the household goods that were ordered to be moved.

2. Charges for any additional services requested by the shipper after the contract for service was issued.

3. Charges for impracticable operations, if applicable; however, such charges may not exceed 15 percent of all other

charges due at delivery.

4. Any specific valuation rate charges due, as provided in s. 507.04(4), if applicable.

(b) The mover may bill and collect from the shipper any remaining charges not collected at the time of delivery in accordance with s. 507.065. This paragraph does not apply if the loss or destruction of household goods occurred as a result of an act or omission of the shipper.

(c) A mover must determine, at its own expense, the proportion of the household goods, based on actual or constructive weight, that were lost or destroyed in transit.

(2) TOTAL LOSSES.—A mover may not collect, or require a shipper to pay, freight charges, including a charge for accessorial services, when a household goods shipment is lost or destroyed in transit; however, the mover may collect a specific valuation rate charge due, as provided in s. 507.04(4). This subsection does not apply if the loss or destruction was due to an act or omission of the shipper.

(3) SHIPPER'S RIGHTS.—A shipper's rights under this section are in addition to any other rights the shipper may have with respect to household goods that were lost or destroyed while in the custody of the mover or the mover's agent. These rights also apply regardless of whether the shipper exercises his or her right to obtain a refund of the portion of a mover's published freight charges corresponding to the portion of the lost or destroyed household goods, including any charges for

accessorial services, at the time the mover disposes of claims for loss, damage, or injury to the household goods.

Section 10. Subsections (1), (4), and (5) of section 507.07, Florida Statutes, are amended to read:

507.07 Violations.—It is a violation of this chapter:

(1) To operate ~~conduct business as a mover or moving broker, or advertise to engage~~ in violation ~~the business~~ of ~~moving~~ or fail to comply with ss. 507.03-507.10, or any other requirement under this chapter ~~offering to move, without being registered with the department~~.

(4) To increase the contracted cost ~~fail to honor and comply with all provisions of the contract~~ for moving services in any way other than provided for in this chapter ~~or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder~~.

(5) To withhold delivery of household goods or in any way hold household goods in storage against the expressed wishes of the shipper if payment has been made as delineated in the estimate or contract for services, or pursuant to this chapter.

Section 11. Section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the

rules or orders issued pursuant to this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 for each act or omission.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation, subject to the conditions specified by the department.

(2) The department shall, upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, immediately suspend a registration or the processing of an application for a registration if the registrant, the applicant, or an officer or a director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or a crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

(3) The administrative proceedings that ~~which~~ could result in the entry of an order imposing any of the penalties specified in subsection (1) or subsection (2) are governed by chapter 120.

~~(3) The department may adopt rules under ss. 120.536(1) and 120.54 to administer this chapter.~~

Section 12. Subsection (1) of section 507.11, Florida Statutes, is amended to read:

507.11 Criminal penalties.—

(1) The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment in accordance with s. 507.065 or s. 507.066 ~~of the amount of a written estimate or contract~~, or after the officer determines that the mover did not produce a signed estimate or contract for service upon which demand is being made for payment, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from a law enforcement officer to relinquish household goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

Section 13. Section 507.14, Florida Statutes, is created to read:

507.14 Rulemaking.—The department shall adopt rules to administer this chapter.

Section 14. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 895 Flood Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Ahern and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Cooper	Cooper
2) Appropriations Committee	22 Y, 3 N	Keith	Leznoff
3) Regulatory Affairs Committee		Cooper	Hamon K.W.H.

SUMMARY ANALYSIS

The National Flood Insurance Program (NFIP) is a federal program that offers federally-subsidized flood insurance to property owners and promotes land-use controls in floodplains. The Federal Emergency Management Agency (FEMA) administers the NFIP. The Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) made major changes to the NFIP, including an increase in rates charged by the NFIP for flood insurance, starting in 2013. However, starting October 1, 2013, some NFIP policies that were subsidized moved directly to full-risk rates, resulting in dramatic flood insurance rate increases for some homeowners. In March 2014, federal legislation was enacted to moderate some of the rate increases resulting from BW-12.

In 2014, the Legislature enacted s. 627.715, F.S., to provide a framework for a private, personal lines flood insurance market in Florida. The section provides for four types of flood insurance: *standard flood insurance* (which is equivalent to a standard policy under the NFIP), *preferred flood insurance, customized flood insurance*, and *supplemental flood insurance*. The section allows insurers to develop rates for flood coverage, by either filing the rate with the Office of Insurance Regulation (OIR) and obtaining approval, or, until October 1, 2019, use a rate without the OIR's approval, so long as the rate is not excessive, inadequate, or unfairly discriminatory. Additionally, surplus lines insurers are permitted (until July 1, 2017) to offer primary flood coverage without the agent having to obtain three declinations from authorized insurers.

The bill amends s. 627.715, F.S., to:

- Create a fifth type of flood insurance, called "flexible flood insurance," which is defined as the coverage for the peril of flood that may include water intrusion coverage, and includes or excludes specified provisions.
- Require that flexible flood policies must be acceptable to the mortgage lender if such policy, contract, or endorsement is intended to satisfy a mortgage requirement.
- Clarify the definition of supplemental insurance to permit coverage in excess over any other insurance covering the peril of flood.
- Provide that the notice that insurance agents must provide to potential insureds must notify the applicant that the full risk rate may apply, if NFIP coverage at a subsidized rate is discontinued.
- Authorizes the OIR to require insurers to provide appropriate return of premium to affected insureds, if the OIR determines a rate is excessive or unfairly discriminatory.
- Allow an insurer to request a certification from the OIR that acknowledges that a private flood policy equals or exceeds the coverage offered by NFIP. Subject to the OIR's verification that such policy is NFIP-equivalent, these certifications may be used in advertising and communications with agents, lenders, insureds, and potential insureds. The bill provides that an insurer or agent who knowingly misrepresents that a flood policy, contract, or endorsement is certified commits an unfair and deceptive act.

The bill has no fiscal impact on state government revenues or expenditures. The bill may have a positive impact on the private sector.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

National Flood Insurance Program

The National Flood Insurance Program (NFIP or program) was created by the passage of the National Flood Insurance Act of 1968 to offer federally-subsidized flood insurance to property owners and to promote land-use controls in floodplains. The NFIP is administered by the Federal Emergency Management Agency (FEMA). The federal government will make flood insurance available within a community, if that community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains.[1]

Nationally, the NFIP provided flood insurance coverage for 5.8 million properties and insured more than $1.3 trillion in assets in 2013.[2] Total earned premium for NFIP coverage for 2012 was $3.5 trillion.

Federal Requirements to Obtain NFIP Flood Insurance

In 1973 the U.S. Congress passed the Flood Disaster Protection Act.[3] The Act required property owners with mortgages issued by federally regulated or insured lenders to purchase flood insurance if their property was located in a Special Flood Hazard Area. Special Flood Hazard Areas are defined by FEMA as high-risk areas where there is at least a one in four chance of flooding during a 30-year mortgage.

The National Flood Insurance Reform Act of 1994[4] (1994 Reform Act) required federal financial regulatory agencies[5] to revise their flood insurance regulations. The 1994 Reform Act also applied flood insurance requirements to loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and to agencies that provide government insurance or guarantees, such as the Small Business Administration, the Federal Housing Administration, and the Veterans Administration.[6]

The 1994 Reform Act prohibits federally regulated lending institutions from offering loans on properties located in a Special Flood Hazard Area of a community participating in the NFIP, unless the property is covered by flood insurance.[7] The minimum amount of NFIP flood insurance required by the 1994 Reform Act must be *at least* equal to the outstanding principal balance of the loan, or the maximum amount available under the NFIP, whichever is less.[8] This minimum standard also applies to private flood insurance accepted in lieu of NFIP flood insurance.[9] These provisions do not apply to state-owned property covered under an adequate state self-insurance policy satisfactory to FEMA, or to small loans (defined as having an original outstanding principal balance of $5,000 or less and a repayment term of one year or less).[10]

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[1] FEMA, *National Flood Insurance Program, Program Description*, (Aug. 1, 2002), https://www.fema.gov/media-library/assets/documents/1150?id=1480 (last viewed Mar. 26, 2015)
[2] All 2013 NFIP statistics are available at http://www.fema.gov/statistics-calendar-year (last viewed Mar. 26, 2015).
[3] These statutes are codified at 42 U.S.C. §§4001-4129.
[4] Title V of the Riegle Community Development and Regulatory Improvement Act of 1994. Pub. L. 103-325, Title V, 108 Stat. 2160, 2255-87 (September 23, 1994).
[5] The federal financial regulators are the Office of Comptroller of Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Farm Credit Administration, and the Board of Governors of the Federal Reserve System.
[6] *FDIC Compliance Manual*, V – 6.1. http://www.fdic.gov/regulations/compliance/manual/index.html (last viewed Mar. 26, 2015).
[7] 42 U.S.C §4012a(b).
[8] 42 U.S.C. §4012a(b)(1)(A).
[9] 42 U.S.C. §4012a(b)(1)(B).
[10] 42 U.S.C. §4012a(c).

For properties located outside Special Flood Hazard Areas, lenders on their own initiative may require flood insurance to be purchased to protect their investment. Additionally, it is noted that the Federal Housing Administration, a federal mortgage insurer, is authorized to require flood insurance coverage higher than the NFIP minimum requirement on FHA-guaranteed mortgages, under the authority of the federal Housing Act.[11]

Standard NFIP Flood Insurance Policies

The standard flood insurance policy dwelling form offered by the NFIP[12] is a single peril flood policy that pays for direct physical damage to the insured residential property up to the replacement cost[13] (RCV) or actual cash value (ACV) or the policy limit.[14] The maximum coverage limit for a NFIP standard residential flood insurance policy is $250,000.[15] The NFIP also offers up to $100,000 in personal property (contents) coverage for residential property, which is always paid at ACV.[16]

The maximum coverage available to a condominium association purchased to cover the condominium building, the common and individually owned building elements within the condominium units, improvements within the units, and contents owned in common is $250,000 per unit multiplied by the total number of units, or the replacement cost of the condominium building, whichever is less.[17] Individual condominium unit owners can purchase flood insurance through the NFIP to insure contents in their condominium unit with a separate dwelling form policy. The NFIP flood insurance coverage limits on non-residential buildings are $500,000 in coverage to the building and $500,000 in contents coverage.[18] Properties that cannot obtain flood insurance through the NFIP or need more coverage (called excess coverage) than that provided by the NFIP can purchase flood insurance from licensed Florida insurers in the admitted market or surplus lines insurers,[19] although availability may be limited.

Most NFIP policies also include increased cost of compliance coverage of up to $30,000 per building for the increased cost to elevate, demolish, or relocate a building to comply with state or community floodplain management laws or ordinances after a flood which substantially damages or repetitively damages the building.[20]

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[11] *Feaz v. Wells Fargo Bank, N.A.*, 745 F.3d 1098 (11th C.A. 2014). The Housing Act confers on the Secretary of the U.S. Department of Housing and Urban Development the authority to prescribe terms for FHA-insured mortgage contracts, such as mandatory covenants requiring a FHA borrower to maintain hazard and flood insurance in amounts required by the lender. In *Feaz*, the Eleventh Circuit interpreted a FHA covenant to permit the lender to require flood coverage above the NFIP minimum (i.e., the lesser of the loan's principal balance or the NFIP maximum of $250,000), to require the lesser of the home's replacement value or $250,000.

[12] The standard form insures one-to-four family residential buildings and single-family dwelling units in a condominium building. The NFIP also offers (a) a general property form that is used to insure five-or-more-family residential buildings and non-residential buildings and (b) a residential condominium building association policy form that insures residential condominium association buildings. *National Flood Insurance Program: Summary of Coverage*, Federal Emergency Management Agency (FEMA F-679/November 2012), http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f_679_summaryofcoverage_11_2012.pdf (last viewed Mar. 26, 2015).

[13] To obtain RCV coverage under the NFIP dwelling form, the building must be a single-family dwelling, be the principal residence of the insured at the time of loss (the insured lives there at least 80 percent of the year), and the building coverage of at least 80 percent of the full replacement cost of the building or its the maximum available for the property under the NFIP.

[14] *National Flood Insurance Program: Summary of Coverage*, Federal Emergency Management Agency (FEMA F-679/November 2012) http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f_679_summaryofcoverage_11_2012.pdf (last viewed Mar. 26, 2015).

[15] 44 C.F.R. §61.6.

[16] *Id.*

[17] 44 C.F.R. §61.6(b).

[18] 44 C.F.R. §61.6.

[19] Unlike insurers in the admitted market, surplus lines insurers are not licensed insurers, do not have their rates regulated by the Office of Insurance Regulation, and do not participate in the Florida Insurance Guaranty Association.

[20] The total amount of a building claim and an increased cost of coverage claim cannot exceed the maximum limit for building property coverage. For a single-family home, this is $250,000. The limit is $500,000 for non-residential structures. See *National Flood Insurance Program: Summary of Coverage*, Federal Emergency Management Agency (FEMA F-679/November 2012).

NFIP flood policies have separate deductibles for building and personal property (contents) coverage, so a policyholder could pay two deductibles if a loss occurs. Generally, for most properties built before the effective date of the first flood insurance rate map[21] for a community, the minimum deductible[22] is:

- $1,000 if the property is located in certain flood zones.
- $2,000 if the property is located in other flood zones.

For most properties built after the effective date of the first flood insurance rate map for a community, the minimum deductible is $1,000 if the property is insured in any flood zone.[23]

Generally, deductibles for most NFIP residential policies can increase in $1,000 increments from the required minimum, with the maximum deductible being $5,000 for building coverage and $5,000 for contents coverage.[24]

The Biggert-Waters Flood Insurance Reform Act of 2012

Following flood losses from the 2005 hurricanes Katrina, Rita, and Wilma, the NFIP borrowed $21 billion from the U.S. Treasury in order to remain solvent. However, flood losses in 2012 from Super-storm Sandy increased the NFIP's deficit. In 2012, the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act).[25] The Biggert-Waters Act reauthorized the National Flood Insurance Program for five years. Key provisions of the legislation require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map updates impact policyholders. These changes by Congress have resulted in premium rate increases for approximately 20 percent of NFIP policyholders nationwide.

The Biggert-Waters Act increases flood insurance premiums purchased through the program for second homes, business properties, severe repetitive loss properties, and substantially improved damaged properties by requiring premium increases of 25 percent per year until premiums meet the full actuarial cost of flood coverage. Most residences immediately lose their subsidized rates if the property is sold, the policy lapses, repeated and severe flood losses occur, or a new policy is purchased. Some flood maps used by FEMA have not been updated since the 1980s. Policyholders whose communities adopt a new, updated Flood Insurance Rate Map (FIRM) that results in higher rates will experience a five year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

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http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f_679_summaryofcoverage_11_2012.pdf (last viewed Mar. 26, 2015).

[21] The effective date of the first flood insurance rate map (FIRM) for Florida communities can be found at http://www.fema.gov/cis/FL.pdf (last viewed Mar. 26, 2015); *National Flood Insurance Program Flood Insurance Manual*, RATE 16, Federal Emergency Management Agency (Revised Oct. 2013), http://www.fema.gov/media-library/assets/documents/34745 (last viewed Mar. 26, 2015).

[22] The minimum deductible for properties located in any flood zone in the NFIP emergency program is $2,000. The minimum deductible for pre-FIRM properties with optional post-FIRM elevation ratings in any flood zone is $1,000. See *National Flood Insurance Program Flood Insurance Manual*, RATE 14, Federal Emergency Management Agency (Revised October 2013). http://www.fema.gov/media-library/assets/documents/34745 (last viewed Mar. 26, 2015).

[23] *National Flood Insurance Program Flood Insurance Manual*, RATE 14, Federal Emergency Management Agency (Revised October 2013). http://www.fema.gov/media-library/assets/documents/34745 (last viewed Mar. 26, 2015).

[24] For a full listing of NFIP deductible options, see *National Flood Insurance Program Flood Insurance Manual*, RATE 14-RATE 15, Federal Emergency Management Agency (Revised October 2013). http://www.fema.gov/media-library/assets/documents/34745 (last viewed Mar. 26, 2015). Deductibles for non-residential flood policies can increase to $50,000 for building and $50,000 for contents coverage.

[25] FEMA, Flood Insurance Reform, https://www.fema.gov/national-flood-insurance-program/flood-insurance-reform (last viewed Mar. 26, 2015).

The Reform Act also requires most NFIP policyholders to pay a 5% assessment on their policy to create a reserve fund for catastrophic losses.[26] Additional changes to premium rates, including those paid by the 80 percent of NFIP policyholders with non-subsidized rates, can occur upon remapping. Current law limits rate increases due to remapping to 10 percent per year, so Biggert-Waters allows a larger annual rate increase for remapped properties. However, federal action in the 2014 federal omnibus spending bill has likely delayed rate increases associated with remapping for 12-18 months, as described below.

2014 Federal Flood Reform Bills

The Consolidated Appropriations Act of 2014 and the Homeowner Flood Insurance Affordability Act of 2014[27] repealed or modified some provisions of the Biggert-Waters Act. The new law reduced the rate mandatory rate increases for subsidized properties from 25% annually to no less than 5%, generally not to increase more than 18% annually.[28] Properties that remain subject to the 25 percent annual increase include older business properties, older non-primary residences, severe repetitive loss properties, and pre-FIRM properties. The 20% annual phase-in of premium increases after adoption of a new or updated flood insurance rate map was reduced to a maximum of no more than an 18% annual premium increase. For property not currently at a full-risk rate, a minimum increase of 5% per year is required for flood policies on primary residences built on or before December 31, 1994 or before the effective date of the initial flood insurance rate map for the community was adopted.[29]

The policyholder refunds were provided to policyholders whose rate increases were revised by the 2014 changes. Additional revisions included increasing the maximum flood insurance deductibles, directing FEMA to consider property specific flood mitigation in determining a full-risk rate, and creating the position of a Flood Insurance Advocate.

NFIP Flood Insurance in Florida

Over two million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates. This accounts for approximately 37% of the total flood policies written by the NFIP, more than any other state.[30] Eighty-seven percent of the two million Florida policies (1.78 million policies) have nonsubsidized rates, so they will not be subject to the 25% annual rate increases under Biggert-Waters. These policies, however, may see routine annual rate increases and rate increases of up to 20% per year, due to remapping after FEMA is allowed to spend funds on remapping.

From 1987-2008, the NFIP collected $3.60 in Florida premiums for every $1 paid in claims to Florida.[31] The rate impact of the Biggert-Waters Act on subsidized policies in Florida is approximately as follows:

- Approximately 50,000 secondary residences, businesses, and severe repetitive loss properties are subject to immediate, annual 25 percent increases until their premiums are full risk premiums.
- Approximately 103,000 primary residences will lose their subsidy if the property is sold, the policy lapses, if the property suffers severe, repeated flood losses, or if a new policy is purchased.
- Approximately 115,000 non-primary residences, business properties, and severe repetitive loss properties are subject to the elimination of subsidies once FEMA develops guidance for their removal.

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[26] For those NFIP policies with a 25% rate increase, the 5% assessment is not on top of the 25% rate increase. In other words, 5% of the 25% increase will be allocated to the Reserve Fund.

[27] Homeowner Flood Insurance Affordability Act of 2014, H.R. 3370, 113th Cong. (2014) (Pub. L. No. 113-89).

[28] FEMA, *Homeowner Flood Insurance Affordability Act Overview*, https://www.fema.gov/media-library/assets/documents/93074 (last viewed Mar. 26, 2015).

[29] FN 27, at section 5.

[30] Florida NFIP statistics contained in this and the following paragraphs are from the House Insurance & Banking Subcommittee meeting materials for the September 25, 2013 meeting.

[31] Wharton Center for Risk Management and Decision Processes, Issue Brief, Fall 2011 – "Who's paying and who's benefiting most from flood insurance under the NFIP? A Financial Analysis of the US. National Flood Insurance Program," opim.wharton.upenn.edu/risk/library/WRCib2011b-nfip-who-pays.pdf

Private Market Flood Insurance in Florida

The 2014 Legislature enacted s. 627.715, F.S., governing the sale of personal lines, residential flood insurance.[32] Flood is defined in the standard NFIP policy as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.

Authorized insurers may sell four different types of flood insurance products:

- Standard coverage, which covers only losses from the peril of flood as defined in the bill, which is the definition used by the National Flood Insurance Program (NFIP). The policy must be the same as coverage offered from the NFIP regarding the definition of flood, coverage, deductibles, and loss adjustment.
- Preferred coverage, which includes the same coverage as standard flood insurance and also must cover flood losses caused by water intrusion from outside the structure that are not otherwise covered under the definition of flood in the bill.
- Customized coverage, which is coverage that is broader than standard flood coverage.
- Supplemental coverage, which supplements an NFIP flood policy or a standard or preferred policy from a private market insurer. Supplemental coverage may provide coverage for jewelry, art, deductibles, and additional living expenses. It does not include excess flood coverage over other flood policies.

Insurers must provide prominent notice on the policy declarations or face page of deductibles and any other limitations on flood coverage or policy limits. Insurance agents that receive a flood insurance application must obtain a signed acknowledgement from the applicant stating that the full risk rate for flood insurance may apply to the property if flood insurance is later obtained under the NFIP.

An insurer may establish flood rates through the standard process in s. 627.062, F.S. Alternatively, rates filed before October 1, 2019, may be established through a rate filing with the Office of Insurance Regulation (OIR) that is not required to be reviewed by the OIR before implementation of the rate ("file and use" review) or shortly after implementation of the rate ("use and file" review). Specifically, the flood rate is exempt from the "file and use" and "use and file" requirements of s. 627.062(2)(a), F.S. Such filings are also exempt from the requirement to provide information necessary to evaluate the company and the reasonableness of the rate. The OIR may, however, examine a rate filing at its discretion. To enable the office to conduct such examinations, insurers must maintain actuarial data related to flood coverage for two years after the effective date of the rate change. Upon examination, the OIR will use actuarial techniques and the standards of the rating law to determine if the rate is excessive, inadequate or unfairly discriminatory. The law allows projected flood losses for personal residential property insurance to be a rating factor. Flood losses may be estimated using a model or straight average of models found reliable by the Florida Commission on Hurricane Loss Projection Methodology.

Insurers that write flood coverage must notify the OIR at least 30 days before doing so in this state and file a plan of operation, financial projections, and any such revisions with the OIR. Surplus lines agents may export flood insurance without making a diligent effort to seek coverage from three or more authorized insurers until July 1, 2017. Citizens Property Insurance Corporation is prohibited from providing flood insurance and the Florida Hurricane Catastrophe Fund is prohibited from reimbursing flood losses.

[32] Ch. 2014-80, Laws of Fla.

Effect of the Bill

The bill amends s. 627.715, F.S., to allow insurers to sell flexible flood insurance, which is defined as coverage for the peril of flood that may include water intrusion coverage and differs from standard or preferred coverage by:

- Including a deductible as authorized in s. 627.701, F.S.
- Being adjusted in accordance with s. 627.7011(3), F.S.
- Covering only the principal building, as defined in the policy.
- Including or excluding coverage for additional living expenses.
- Excluding coverage for personal property or contents.

Flexible flood coverage must be acceptable to the mortgage lender if it is intended to satisfy a mortgage requirement.

The section removes language in statute that specifies a supplemental flood insurance policy does not include flood coverage for the purpose of excess coverage over any other insurance policy covering the peril of flood. Removing this language from law could allow a supplemental flood insurance policy to provide coverage in excess of other coverage that is insuring for the peril of flood.

The bill also clarifies the signed acknowledgement that a licensed insurance agent must obtain notifying the applicant about the potential loss of subsidized rates when discontinuing coverage from the NFIP. The notice is revised to specify that the policyholders, who might lose subsidies, are those who have subsidized NFIP policies.

Lastly, the bill allows an insurer to request from the OIR a certification that acknowledges that the insurer provides a policy, contract, or endorsement for the flood insurance that provides coverage equaling or exceeding the flood coverage offered by the NFIP. A certified policy must be in compliance with 42 U.S.C. s. 1042a(b), which requires federally regulated lending institutions to accept private flood insurance that insures the building and personal property securing the loan for the term of the loan in an amount not less than the outstanding principal balance of the loan or the limit of NFIP flood insurance coverage, whichever is less. Subject to the OIR's verification that the policy is NFIP-equivalent, an insurer or its agent may reference or include such certification in advertising and communications with an agent, a lending institution, an insured, and a potential insured. The authorized insurer may also include a statement that notifies an insured of the certification on the declarations page or other policy documentation related to flood coverage. A knowing misrepresentation that a flood insurance policy is certified is an unfair or deceptive act.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.715, F.S., relating to flood insurance.

Section 2. Provides an effective date of July 1, 2015.

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:

To the extent that the bill encourages more private insurers to provide coverage for flood loss, consumers may ultimately benefit from increased competition.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Insurance & Banking Subcommittee considered a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The committee substitute reflects multiple changes, as follows:

- Removed a provision from the bill that required components for inclusion in the coastal management element of local government comprehensive plans.
- Removed a provision from the bill that required licensed surveyors and mappers to complete elevation certificates in accordance with procedures developed by the Division of Emergency Management.

- Removed a provision from the bill that allowed insurers to offer flood coverage only for the outstanding mortgage on the property.

- Removed a provision from the bill that allowed dwelling loss to be adjusted only on the basis of the actual cash value of the property.

- Removed a provision of the bill that required an agent to offer a flood insurance quote for a residence located within a Special Flood Hazard Area designated by the Federal Emergency Management Agency.

- Added a provision to the bill that allowed OIR to require insurers to return premium to affected insureds if the office determined that a rate was excessive or unfairly discriminatory.

- Added a provision that an insurer's advertisement of its policy coverage as being equal or exceeding coverage offered by the NFIP may only occur if OIR confirms that statement's veracity.

- Added a provision to the bill that an insurer or agent who knowingly misrepresents that a flood insurance policy is certified commits an unfair or deceptive act.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to flood insurance; amending s. 627.715, F.S.; authorizing flexible flood insurance; specifying coverage requirements; requiring such insurance to be acceptable to the mortgage lender if intended to satisfy a mortgage requirement; deleting a provision that prohibited supplemental flood insurance from including excess coverage over any other insurance covering the peril of flood; revising the information that must be prominently noted on a policy declaration page; requiring the Office of Insurance Regulation to require the return of certain premiums to affected insureds if the office determines that a rate is excessive or unfairly discriminatory; revising the notice required to be acknowledged by an applicant for flood coverage from certain insurers if the applicant's property is receiving flood insurance under the National Flood Insurance Program; allowing an authorized insurer to request a certification from the Office of Insurance Regulation which indicates that a policy, contract, or endorsement issued by the insurer provides coverage for the peril of flood which equals or exceeds the flood coverage offered by the National Flood Insurance Program; specifying requirements for such certification; authorizing such insurer or its agent to reference or include the

certification in specified advertising, communications, and documentation; providing that misrepresenting the certification of a flood policy, contract, or endorsement is an unfair or deceptive act; providing an effective date.

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

Section 1. Section 627.715, Florida Statutes, is amended to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. This section also does not apply to coverage for the peril of flood that is excess coverage over any other insurance covering the peril of flood. An insurer may issue flood insurance policies, contracts, or endorsements on a standard, preferred, customized, or supplemental basis.

(1)(a)1. Standard flood insurance must cover only losses from the peril of flood, as defined in paragraph (b), equivalent to that provided under a standard flood insurance policy under the National Flood Insurance Program. Standard flood insurance issued under this section must provide the same coverage,

including deductibles and adjustment of losses, as that provided under a standard flood insurance policy under the National Flood Insurance Program.

2. Preferred flood insurance must include the same coverage as standard flood insurance but:

a. Include, within the definition of "flood," losses from water intrusion originating from outside the structure that are not otherwise covered under the definition of "flood" provided in paragraph (b).

b. Include coverage for additional living expenses.

c. Require that any loss under personal property or contents coverage that is repaired or replaced be adjusted only on the basis of replacement costs up to the policy limits.

3. Customized flood insurance must include coverage that is broader than the coverage provided under standard flood insurance

4. Flexible flood insurance must cover losses from the peril of flood, as defined in paragraph (b), and may cover losses from water intrusion originating from outside the structure which are not otherwise covered by the definition of flood. Flexible flood insurance must provide at least one of the following:

a. A deductible in an amount authorized by and subject to the requirements of s. 627.701, including a deductible in an amount authorized for hurricanes.

b. A requirement that flood loss to a dwelling or personal

property be adjusted in accordance with s. 627.7011(3).

c. A provision limiting flood coverage to the principal building, as defined in the policy.

d. A provision including or excluding coverage for additional living expenses.

e. A provision excluding coverage for personal property or contents as to the peril of flood.

Flexible flood insurance must be acceptable to the mortgage lender if such policy, contract, or endorsement is intended to satisfy a mortgage requirement.

5.~~4.~~ Supplemental flood insurance may provide coverage designed to supplement a flood policy obtained from the National Flood Insurance Program or from an insurer issuing standard or preferred flood insurance pursuant to this section. Supplemental flood insurance may provide, but need not be limited to, coverage for jewelry, art, deductibles, and additional living expenses. ~~Supplemental flood insurance does not include coverage for the peril of flood that is excess coverage over any other insurance covering the peril of flood.~~

(b) "Flood" means a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties, at least one of which is the policyholder's property, from:

1. Overflow of inland or tidal waters;

2. Unusual and rapid accumulation or runoff of surface

waters from any source;

3. Mudflow; or

4. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in this paragraph.

(2) ~~Any limitations on~~ Flood coverage deductibles and ~~or~~ policy limits pursuant to this section~~, including, but not limited to, deductibles,~~ must be prominently noted on the policy declarations page or face page.

(3)(a) An insurer may establish and use flood coverage rates in accordance with the rate standards provided in s. 627.062.

(b) For flood coverage rates filed with the office before October 1, 2019, the insurer may also establish and use such rates in accordance with the rates, rating schedules, or rating manuals filed by the insurer with the office which allow the insurer a reasonable rate of return on flood coverage written in this state. Flood coverage rates established pursuant to this paragraph are not subject to s. 627.062(2)(a) and (f). An insurer shall notify the office of any change to such rates within 30 days after the effective date of the change. The notice must include the name of the insurer and the average statewide percentage change in rates. Actuarial data with regard to such rates for flood coverage must be maintained by the

insurer for 2 years after the effective date of such rate change and is subject to examination by the office. The office may require the insurer to incur the costs associated with an examination. Upon examination, the office, in accordance with generally accepted and reasonable actuarial techniques, shall consider the rate factors in s. 627.062(2)(b), (c), and (d), and the standards in s. 627.062(2)(e), to determine if the rate is excessive, inadequate, or unfairly discriminatory. If the office determines that a rate is excessive or unfairly discriminatory, the insurer must provide appropriate return of premium to affected insureds.

(4) A surplus lines agent may export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a). This subsection expires July 1, 2017.

(5) In addition to any other applicable requirements, an insurer providing flood coverage in this state must:

(a) Notify the office at least 30 days before writing flood insurance in this state; and

(b) File a plan of operation and financial projections or revisions to such plan, as applicable, with the office.

(6) Citizens Property Insurance Corporation may not provide insurance for the peril of flood.

(7) The Florida Hurricane Catastrophe Fund may not provide reimbursement for losses proximately caused by the peril of

flood, including losses that occur during a covered event as defined in s. 215.555(2)(b).

(8) An agent must, upon receiving ~~obtaining~~ an application for flood coverage from an authorized or surplus lines insurer for a property receiving flood insurance under the National Flood Insurance Program, ~~must~~ obtain an acknowledgment signed by the applicant before placing the coverage with the authorized or surplus lines insurer. The acknowledgment must notify the applicant that, if the applicant discontinues coverage under the National Flood Insurance Program which is provided at a subsidized rate, the full risk rate for flood insurance may apply to the property if the applicant ~~such insurance is~~ later seeks to reinstate coverage ~~obtained~~ under the ~~National Flood Insurance~~ program.

(9) With respect to the regulation of flood coverage written in this state by authorized insurers, this section supersedes any other provision in the Florida Insurance Code in the event of a conflict.

(10) If federal law or rule requires a certification by a state insurance regulatory official as a condition of qualifying for private flood insurance or disaster assistance, the Commissioner of Insurance Regulation may provide the certification, and such certification is not subject to review under chapter 120.

(11)(a) An authorized insurer offering flood insurance may request the office to certify that a policy, contract, or

endorsement provides coverage for the peril of flood which equals or exceeds the flood coverage offered by the National Flood Insurance Program. To be eligible for certification, such policy, contract, or endorsement must state, and the office must confirm, that it meets the private flood insurance requirements specified in 42 U.S.C. s. 4012a(b) and may not contain any provision that is not in compliance with 42 U.S.C. s. 4012a(b).

(b) The authorized insurer or its agent may reference or include a certification under paragraph (a) in advertising or communications with an agent, a lending institution, an insured, or a potential insured only for a policy, contract, or endorsement that is certified under this subsection. The authorized insurer may include a statement that notifies an insured of the certification on the declarations page or other policy documentation related to flood coverage certified under this subsection.

(c) An insurer or agent who knowingly misrepresents that a flood policy, contract, or endorsement is certified under this subsection commits an unfair or deceptive act under s. 626.9541.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 915 Building Codes
SPONSOR(S): Government Operations Appropriations Subcommittee; Business & Professions Subcommittee; Eagle and others
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/CS/SB 1232

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Whittier	Luczynski
2) Government Operations Appropriations Subcommittee	12 Y, 0 N, As CS	White	Topp
3) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

The bill makes the following changes to law:

- Makes several adjustments to the training and experience required to take the certification exam for building code inspector, plans examiner, and building code administrator;
- Amends the definition of "contractor" to allow licensed Category I liquefied petroleum gas dealers, LP gas installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of an existing water heater;
- Adds Division II contractors (sheet metal, roofing, Class A air-conditioning, Class B air-conditioning, Class C air-conditioning, mechanical, commercial pool/spa, residential pool/spa, swimming pool/spa servicing, plumbing, underground utility and excavation, solar, pollutant storage systems, and specialty) to the Florida Homeowners' Construction Recovery Fund section, which would allow homeowners to make a claim and receive restitution from the fund when they have been harmed by a Division II contractor, subject to certain requirements and financial caps;
- Exempts low-voltage landscape lighting with a cord and a plug from having to be installed by a licensed electrical contractor;
- Clarifies that a portable pool used for swimming lessons that are sponsored or provided by school districts is a private pool and not subject to regulation;
- Provides funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Code informal interpretations;
- Authorizes local building officials to issue phased permits for the construction of the foundation or any other part of a building or structure before the construction documents for the entire building or structure have been submitted;
- Removes provisions regarding the development of advanced courses related to the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the code;
- Adds Underwriters Laboratories, LLC, to the list of entities that are authorized to produce information on which product approvals are based, related to the code; and
- Requires local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals, which includes energy raters and HVAC contractors.

The bill has an insignificant negative fiscal impact on state government and does not appear to have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Building Code Administrators, Plans Examiners, and Inspectors Certifications (Section 1)

Present Situation

As the housing market and construction industry in the state slowed down in recent years, local building code departments began trimming their staffs. Now, as the economy is beginning to recover, local building code departments are struggling to find individuals to fill Florida Building Code (code) inspector positions because the municipalities rely on inspectors with multiple inspection certifications to complete several inspections on a single trip. The current rules and statutes related to obtaining certifications, however, makes acquiring multiple certifications difficult.

Building Code Inspector and Plans Examiner

In order to take the examination for building code inspector or plans examiner certification, s. 468.609(2), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

No.	Requirements
Option 1.	Demonstrates five years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
Option 2.	Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals four years, with at least one year of such total being experience in construction, building code inspection, or plans review.
Option 3.	Demonstrates a combination of technical education in the field of construction or a related field and experience which totals four years, with at least one year of such total being experience in construction, building code inspection, or plans review.
Option 4.	Currently holds a standard certificate as issued by the Florida Building Code Administrators and Inspectors Board (Board) or a firesafety inspector license issued pursuant to chapter 633, has a minimum of five years' verifiable full-time experience in inspection or plan review, and satisfactorily completes a building code inspector or plans examiner training program of not less than 200 hours in the certification category sought. The Board shall establish by rule criteria for the development and implementation of the training programs.
Option 5.	Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of two years' experience in the field of building code inspection; plan review; fire code inspections and fire plans review of new buildings as a firesafety inspector; or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program[1] of not less than 300 hours which is approved by the Board in the chosen category of building code inspection or plan review in the certification category sought with not less than 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.

[1] The Board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program.

Individuals are able to meet the above requirements for a single certification; however, it is difficult to earn additional certifications while employed as an inspector or plans examiner.

Building Code Administrator

In order to take the examination for building code administrator certification, s. 468.609(3), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

No.	Requirements
Option 1.	Demonstrates 10 years' combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least five years of such experience in supervisory positions.
Option 2.	Demonstrates a combination of postsecondary education in the field of construction or related field, no more than five years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent which totals 10 years, with at least five years of such total being experience in supervisory positions.

Effect of Proposed Changes

The bill makes several adjustments to the training and experience required to take the certification exam for building code inspector, plans examiner, and building code administrator. Specifically, the bill makes the following major changes to the certification requirements:

Building Code Inspector and Plans Examiner

For Option 4 above, under *Building Code Inspector and Plans Examiner*, the bill reduces the number of years' experience in inspection or plan review from five to three years and lowers the hour requirements for the training program from 200 to 100 hours.

For Option 5 above, under *Building Code Inspector and Plans Examiner*, the bill lowers the hour requirements for the training program from 300 to 200 hours and limits the required hours of instruction from not less than 20 hours to at least 20 hours but not more than 30 hours.

The bill adds a sixth option for eligibility requirements to take the building code inspector or plans examiner certification exam. The bill provides:

No.	Requirements
Option 6.	Currently holds a standard certificate issued by the Board or a firesafety inspector license issued pursuant to chapter 633 and: • Has at least five years of verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of five years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633; and • Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 40 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide at least 500 but not more than 800 hours of training as prescribed by the Board. The Board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category.

Building Code Administrator

For Option 1 above, under *Building Code Administrator*, the bill reduces the number of combined years' experience from 10 to seven years and the required number of years of experience in supervisory positions from five to three. It also adds firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement.

For Option 2 above, under *Building Code Administrator*, the bill reduces the number of combined years' experience from 10 to seven years and the required number of years of experience in supervisory positions from five to three. It adds a requirement of at least 20 hours but not more than 30 hours of training in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. It also adds firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement.

Propane Gas Water Heater Installations (Section 2)

Present Situation

Currently, natural gas utility employees have the authority under s. 489.105, F.S., to disconnect and reconnect water lines when servicing and replacing "existing" water heaters. Although natural gas and propane are piped in the same manner and have the same properties and pressures inside homes, the propane industry does not have the authority to disconnect and reconnect water lines and must contract with plumbers to start and complete this task. This creates additional costs for propane water heater customers. According to the Florida Natural Gas Association, the installers of each of these gases have the same capabilities for their job duties. For example, currently there are three companies within the state that have natural gas and propane sides to their operations. Their employees can disconnect and reconnect water lines when servicing natural gas water heaters, but the same employees cannot do this when servicing propane water heaters.[2]

Effects of Proposed Changes

The bill extends the authority to disconnect and reconnect water lines in the servicing or replacement of an existing water heater to licensed Category I liquefied petroleum gas dealers, LP gas installers, and specialty installers.

Florida Homeowners' Construction Recovery Fund (Sections 3-7)

The Florida Homeowners' Construction Recovery Fund (fund) is created in s. 489.140, F.S., as a separate account in the Professional Regulation Trust Fund.

According to the Department of Business and Professional Regulation (DBPR), the fund was created in 1993, after Hurricane Andrew, as a fund of last resort to compensate consumers who contracted for construction, repair, or improvement of their Florida residence and who suffered monetary damages due to the financial misconduct, abandonment, or fraudulent statement of the licensed contractor,[3] financially responsible officer, or business organization licensed under ch. 489, F.S.[4]

The fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Florida Building Code.[5] The proceeds from the surcharge are allocated equally to the fund and support the operations of the Building Code Administrators and Inspectors Board.[6, 7]

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[2] Email from a representative of the Florida Natural Gas Association, RE: propane tank installations (Mar. 13, 2015).
[3] Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).
[4] s. 489.1402(1)(g), F.S.
[5] s. 468.631(1), F.S.
[6] *Id.*

A claimant must be a homeowner and the damage must have been caused by a Division I contractor.[8] The fund is not permitted to compensate consumers who contracted with Division II contractors or to compensate consumers who suffered damages as a result of payments made in violation of the Florida Construction Lien Law under part I of ch. 713, F.S.

Division I contractors are listed in s. 489.105(3)(a)-(c), F.S., as the following:

- General contractors
- Building contractors
- Residential contractors

Division II contractors are listed in s. 489.105(3)(d)-(q), F.S., as the following:

• Sheet metal contractors	• Residential pool/spa contractors
• Roofing contractors	• Swimming pool/spa servicing contractors
• Class A air-conditioning contractors	• Plumbing contractors
• Class B air-conditioning contractors	• Underground utility and excavation contractors
• Class C air-conditioning contractors	• Solar contractors
• Mechanical contractors	• Pollutant storage systems contractors
• Commercial pool/spa contractors	• Specialty contractors

Decisions regarding the fund are made by the Construction Industry Licensing Board which is housed within DBPR.

Construction Industry Licensing Board

The Construction Industry Licensing Board (CILB) consists of 18 members who are responsible for licensing and regulating the construction industry in this state.[9] The CILB is divided into Division I and Division II members following the definitions of Division I and Division II contractors respectively, jurisdiction falling to each division relative to their scope.[10] Five members constitute a quorum for each division.

The CILB meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings related to licensure and discipline.[11] It engages in rulemaking to implement the provisions set forth in its statutes and conducts other general business, as necessary.[12]

The CILB, with respect to actions for recovery from the fund, may "intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review" on behalf of the state.[13] In accordance with DBPR rules, "The Board shall either authorize payment of the claim in full or in part, or deny the claim in full, by entry of a Final

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[7] In 2013, the Legislature gave DBPR the authority to transfer excess cash to the fund if it determines it is not needed to support the operation of the Building Code Administrators and Inspectors Board; however, DBPR may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S. *See* sect. 2, ch. 2013-187, Laws of Fla.
[8] s. 489.1402(1)(c), (d), and (f), F.S.
[9] s. 489.107, F.S.
[10] s. 489.107(4)(c), F.S.
[11] Florida Department of Business and Professional Regulation, Construction Industry Licensing Board, *available at* http://www.myfloridalicense.com/DBPR/pro/cilb/index.html (Last visited Mar. 18, 2015).
[12] s. 489.108, F.S.
[13] s. 489.142(1), F.S.

Order in accordance with Section 489.143, F.S. Action by the Board shall be considered final agency action."[14]

Section 489.129, F.S., grants the CILB the authority to take actions against any certificateholder or registrant if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195, F.S., is found guilty of certain acts, including the acts that may qualify a claim to the fund. Specifically, the acts that may qualify a claim to the fund are financial misconduct, abandonment, or fraudulent statement of the contractor[15] and are described in s. 489.129(1)(g), (j), or (k), F.S. If the violation is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those subsections.[16]

Financial Misconduct

Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

- Valid liens have been recorded against the customer's property by the contractor for supplies or services ordered by the contractor for which the customer has paid the contractor, but the contractor has not removed the liens within 75 days of such liens;
- The contractor has abandoned a job and the percentage of completion is less than the percentage of the contract price received by the contractor, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after abandonment; or
- The contractor's job has been completed, and the customer has been made to pay more than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the contractor's control, was caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

Abandonment of the Project

Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, which is presumed after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

Fraudulent Statement by the Contractor

Section 489.129(1)(k), F.S, allows disciplinary proceedings for signing a statement with respect to a project or contract:

- Falsely indicating that the work is bonded;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or
- Falsely indicating that workers' compensation and public liability insurance are provided.

[14] Rule 61G4-21.004(7), F.A.C.
[15] Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).
[16] Rule 61G4-21.003(3), F.A.C.

Discipline

Section 489.129, F.S., allows the Board to take the following actions given the circumstances above:

- Place on probation or reprimand the licensee;
- Revoke, suspend, or deny the issuance or renewal of the certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation of a provision of part 1 of ch. 489, F.S.;
- Impose an administrative fine not to exceed $10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.

Claims Process

The claimant must have obtained a final judgment, arbitration award, or Board-issued restitution order against the contractor for damages that are a direct result of a compensable violation. A claim for recovery must be made within one year after the conclusion of any civil, criminal, administrative action, or award in arbitration based on the act.[17]

Completed claim forms must be submitted with:

- A copy of the complaint that initiated action against the contractor, a certified copy of the underlying judgment, order of restitution, or award in arbitration, together with the judgment;
- A copy of any contract between the claimant and the contractor, including change orders;
- Proof of payment to the contractor and/or subcontractors;
- Copies of any liens and releases filed against the property, together with the Notice of Claim and Notice to Owner; copies of applicable bonds, sureties, guarantees, warranties, letters of credit and/or policies of insurance; and
- Certified copies of levy and execution documents and proof of all efforts and inability to collect the judgment or restitution order, and other documentation as may be required by the Board to determine causation of injury or specific actual damages.[18]

Pursuant to s. 489.143, F.S., each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum. For contracts entered prior to July 1, 2004, the fund claims are limited to $25,000 per claim with a total life time aggregate limit of $250,000 per licensee.[19] For contracts entered after July 1, 2004, the per-claim payment limits are increased to $50,000 with a total lifetime aggregate of $500,000 per licensee.[20] Claims are paid in the order that they are filed.[21]

The Board will not compensate claimants from the recovery fund for any of the following reasons.

- The claimant is a licensee who acted as the contractor;
- The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;
- The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;
- The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract;

[17] Rule 61G4-21.003(5), F.A.C.
[18] Rule 61G4-21.003(2), F.A.C.
[19] s. 489.143(2) and (5), F.S.
[20] *Id.*
[21] s. 489.143(6), F.S.

- The claimant was associated in a business relationship with the licensee other than the contract at issue;
- When, after notice, the claimant has failed to provide documentation in support of the claims required by rule;
- Where the licensee has reached the aggregate limit; or
- The claimant has contracted for scope of work described in s. 489.105(3)(d)-(q), F.S. [Division II contractors].[22]

The fund is also not permitted to compensate consumers who suffered damages as a result of payments made in violation of Florida Construction Lien Law under part I of ch. 713, F.S.

Duty of Contractor to Give Notice of Fund

Any agreement or contract for the repair, restoration, improvement, or construction to residential real property must contain a statutorily mandated notification statement informing the consumer of their rights under the recovery fund, unless the total contract price is less than $2,500.[23]

Effects of Proposed Changes

The bill revises the law to include Division II contractors within the parameters of the fund. Specifically, it revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2016, for any contract entered into after July 1, 2015. The bill limits Division II claims to $15,000 per claim with a $150,000 lifetime maximum per licensee.

The bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of the Florida Construction Lien Law for contracts entered into after July 1, 2015.

The bill revises language for the notice that contractors must give to homeowners informing them of their rights under the recovery fund to advise that payments from the fund are up to a limited amount.

Low-Voltage Landscape Lighting (Section 8)

Present Situation

Chapter 489, Part II, regulates electrical and alarm system contractors. This regulation seeks to enable qualified persons to obtain licensure, while ensuring that applicants have sufficient technical experience in the applicable trade prior to licensure, are tested on technical and business matters, and upon licensure are made subject to disciplinary procedures and effective policing of the profession.[24]

Section 489.503, F.S., provides exemptions to Part II for persons performing various tasks such as someone licensed as a fire protection system contractor while engaged in work as a fire protection system contractor, an employee monitoring an alarm system of a business, a lightning rod or related systems installer, etc.

Effects of Proposed Changes

The bill creates an exemption from the requirement to be a licensed electrical contractor for a person who installs low-voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation, wiring, or other modification to the electrical wiring of a structure.

[22] Rule 61G4-21.004(3), F.A.C.
[23] s. 489.1425, F.S.
[24] s. 489.501, F.S.

Public Portable Swimming Pools (Sections 9 through 11)

Present Situation

The Florida Building Commission (Commission) has included standards for the construction of public swimming pools in the code which are enforced by local building departments throughout the state. In 2012, the Legislature determined that local building entities would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the Department of Health (DOH) would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.[25]

The Miami-Dade school district has operated a learn-to-swim program for over 20 years. One of the ways they provide swimming lessons is through the use of portable pools. The DOH recently advised the school district that using portable pools to provide swimming lessons do not meet DOH's criteria and the school district cannot use them for that purpose.[26]

Effect of Proposed Changes

The bill amends the definition of a private pool in s. 514.011, F.S., to include portable pools used exclusively for the purpose of providing swimming lessons or related instruction in support of an established "Learn to Swim" educational program sponsored or provided by a county school district as a private pool and shall not be regulated as a public pool.

Building Code Compliance and Mitigation Program (Sections 12 and 14)

Present Situation

Education and Training Requirements

The DBPR administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to persons who are required to comply with the code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.[27] The program is geared toward persons licensed and employed in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with DBPR.[28]

The education and training requirements of the program include maintaining a thorough knowledge of the code, a thorough knowledge of code compliance and enforcement, duties related to consumers, project completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage. The Commission establishes, via rules, the qualifications of accreditors and criteria for the accreditation of courses. Currently, the program requires advanced code courses for each profession referenced in the code.

Proponents of the bill state the following:

> The advanced code course(s) was initiated when we first adopted a statewide uniform building code. It was mandated that all contractors and design professionals take the "advanced" code course. The various boards adopted the mandate as part of their rules and it became synonymous with any course that was "approved" by the Florida Building

[25] Ch. 2012-184, Laws of Fla.
[26] March 24, 2015, email on file with the Government Operations Appropriations Subcommittee.
[27] s. 553.841(2), F.S.
[28] s. 553.841(3), F.S.

> Commission. It is now just a duplicative process in that you have to get a course approved by the FBC as an "advanced" course to access any of the training dollars through the Building A Safer Florida program. The same courses are approved individually by the various professional boards. It is a duplicative, costly process—you have to pay an accreditor to accredit the course, take it to the FBC Education POC and then take it to the full Commission for approval. The courses are the same whether they get a stamp of "advanced" or not.[29]

Surcharge

Section 553.721, F.S., provides for the DBPR to collect a surcharge that is 1.5 percent of the permit fees associated with enforcement of the code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting. The minimum amount to be collected on any permit issued is $2. The proceeds that are collected from the surcharge are remitted to DBPR and deposited in the Professional Regulation Trust Fund quarterly. These monies fund the Florida Building Code Compliance and Mitigation Program and the Commission.[30] Section 553.721, F.S., provides that the Florida Building Code Compliance and Mitigation Program is allocated $925,000 from this fund each fiscal year.[31]

Building Code System Uniform Implementation Evaluation Workgroup

The Building Code System Uniform Implementation Evaluation Workgroup was created on January 31, 2012, by the Commission and is composed of building industry stakeholders. Its objective was to evaluate the success of the Commission to implement a unified building code throughout the state.[32]

Fire Code Interpretation Committee

Section 633.212, F.S., provides legislative intent that the "Florida Fire Prevention Code be interpreted by fire officials and local enforcement agencies in a manner that reasonably and cost-effectively protects the public safety, health, and welfare; ensures uniform interpretations throughout this state; and provides just and expeditious processes for resolving disputes regarding such interpretations." Further, it is the intent of the Legislature that the Division of State Fire Marshal establish a Fire Code Interpretation Committee composed of seven members and seven alternates, equally representing each area of the state, to which a person can pose questions regarding the interpretation of the Florida Fire Prevention Code provisions.[33]

Each nonbinding interpretation of Florida Fire Prevention Code provisions must be provided within 15 business days after receipt of a request for interpretation. The response period may be waived with the written consent of the party requesting the nonbinding interpretation and the State Fire Marshal. The interpretations are advisory only and nonbinding on the parties or the State Fire Marshal.[34, 35]

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[29] Email from a representative of the Building Industry, RE: advanced courses in Florida Building Code Compliance and Mitigation Program (Mar. 8, 2015).
[30] The Florida Building Code Compliance and Mitigation Program is established in s. 553.841, F.S.
[31] Funds used by DBPR as well as funds to be transferred to DOH shall be as prescribed in the annual General Appropriations Act.
[32] Jeff A. Blair, *Building Code System Uniform Implementation Evaluation Workgroup Report to the Florida Building Commission*, p. 19 (Apr. 8, 2013).
[33] s. 633.212(1), F.S.
[34] s. 633.212(3), F.S.
[35] The Division of State Fire Marshal may charge a fee, not to exceed $150, for each request for a review or nonbinding interpretation.

Effect of Proposed Changes

Education and Training Requirements

The bill removes the requirement that DBPR develop advanced modules for each profession when administering the Florida Building Code Compliance and Mitigation Program. The bill also removes the requirement that the Commission provide for the accreditation of courses related to the code. When this requirement is removed, the Florida Building Code Compliance and Mitigation Program course providers will still be required to have their course reviewed and approved under the appropriate board that would be reviewing and approving the course for continuing education purposes.

Surcharge; Building Code System Uniform Implementation Evaluation Workgroup; and Fire Code Interpretation Committee

The bill provides funding from the existing funds of the Florida Building Code Compliance and Mitigation Program, not to exceed $30,000 in Fiscal Year 2015-2016, for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup. It also provides funding for Florida Fire Code Committee for nonbinding interpretations, not to exceed $15,000 each fiscal year.

Phased Permitting (Section 13)

Present Situation

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within the state without first obtaining a permit therefor from the appropriate enforcing agency.[36] Further, a permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the Commission within the code. However, the code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only.[37]

Section 105.13 (phased permit approval), of the code provides the following:

> After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

Effects of Proposed Changes

The bill provides that after an applicant submits the appropriate construction documents, the local building official may issue a phased permit. If the building official issues a phased permit, an outside agency may not require additional reviews or approvals because the project will need additional outside agency reviews and approvals before the issuance of a master building permit. The holder of a phased permit for the foundation or other parts of a building or structure may proceed with permitted activities at the holder's own risk and without assurance that a master building permit for the entire structure will be granted. The building official may require corrections to the phased permit to meet the requirements of the technical codes.

[36] s. 553.79(1), F.S.
[37] s. 553.79(6), F.S.

Product Evaluation and Approval (Section 15)

Present Situation

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the Commission rather than seeking approval in each local jurisdiction where the product is used.[38] Section 553.842, F.S., directs the Commission to adopt rules to develop and implement a product evaluation and approval system that applies statewide to operate in coordination with the code. The Commission may enter into contracts to provide for administration of the product evaluation and approval system. The product evaluation and approval system is to rely on national and international consensus standards, whenever adopted by the code, for demonstrating compliance with code standards. Other standards which meet or exceed established state requirements are also to be considered.

Section 553.842(8), F.S., authorizes the Commission to adopt rules to approve the following types of entities that produce information on which product approvals are based. The entities must comply with a nationally recognized standard demonstrating independence or no conflict of interest. The Commission is directed to specifically approve the following evaluation entities:[39]

- The National Evaluation Service;
- The International Association of Plumbing and Mechanical Officials Evaluation Service;
- International Code Council Evaluation Services; and
- The Miami-Dade County Building Code Compliance Office Product Control Division.

Effect of Proposed Changes

The bill adds Underwriters Laboratories, LLC (UL), an independent safety consulting and certification company,[40] to the list of entities that are authorized to produce information on which product approvals are based.

Duct and Air Infiltration Tests (Section 16)

Present Situation

As of June 30, 2015, the new 5th Edition (2014) Florida Building Code, Energy Conservation, will go into effect. Part of this new code is section R402.4.1.2 (see below). According to this section, a home constructed to this code will be required to be tested via a blower door test/air infiltration test to demonstrate specific air infiltration levels.

Section R402.4.1.2 (testing), of the code provides the following:

> The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding 5 air changes per hour in Climate Zones 1 and 2, and 3 air changes per hour in Climate Zones 3 through 8. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascals). Where required by the *code official,* testing shall be conducted by an *approved* third party. A written report of the results of the test shall be signed by the

[38] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 House Bill 915, p. 2 (Mar. 9, 2015).
[39] Architects and engineers licensed in this state are also approved to conduct product evaluations, as provided in s. 553.842(5), F.S.
[40] According to Underwriters Laboratories, LLC,"UL is a global independent safety science company with more than a century of expertise innovating safety solutions from the public adoption of electricity to new breakthroughs in sustainability, renewable energy and nanotechnology." http://UL.com, (last visited Mar. 5, 2015).

party conducting the test and provided to the *code official.* Testing shall be performed at any time after creation of all penetrations of the *building thermal envelope.*

Effects of Proposed Changes

The bill requires local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals, which would include energy raters and HVAC contractors.

B. SECTION DIRECTORY:

Section 1. Amends s. 468.609, F.S., relating to certification examination requirements for building code inspectors, plans examiners, and building code administrators.

Section 2. Amends s. 489.105, F.S., relating to plumbing contractors.

Section 3. Amends s. 489.1401, F.S., relating to the Florida Homeowners' Construction Recovery Fund.

Section 4. Amends s. 489.1402, F.S., relating to definitions.

Section 5. Amends s. 489.141, F.S. relating to claims against the recovery fund.

Section 6. Amends s. 489.1425, F.S., relating to notification provided by contractors regarding the recovery fund.

Section 7. Amends s. 489.143, F.S., relating to payments from the Florida Homeowners' Construction Recovery Fund.

Section 8. Amends s. 489.503, F.S., relating to an exemption for certain types of low-voltage landscape lighting.

Section 9. Amends s. 514.011, F.S., relating to definitions.

Section 10. Amends s. 514.0115, F.S., relating to exemptions from supervision or regulation.

Section 11. Amends s. 514.031, F.S., relating to permit necessary to operate public swimming pool.

Section 12. Amends s. 553.721, F.S., relating to the Florida Building Code Compliance and Mitigation Program.

Section 13. Amends s. 553.79, F.S., relating to phased permitting for construction.

Section 14. Amends s. 553.841, F.S., relating to the Florida Building Code Compliance and Mitigation Program.

Section 15. Amends s. 553.842, F.S., relating to Florida Building Code related product evaluation and approval.

Section 16. Amends s. 553.908, F.S., relating to duct and air infiltration tests.

Section 17. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DBPR reports that under the bill, the Florida Building Commission will no longer charge continuing education providers $100 per application for accreditation of building code related education courses. This will result in an approximate $5,000 annual revenue reduction related to application fees ($100 X 50 = $5,000).

2. Expenditures:

See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Homeowners who have been harmed by Division II contractors and receive restitution from the Florida Homeowners' Construction Recovery Fund will benefit from the bill.

D. FISCAL COMMENTS:

The DBPR reports that there will be an anticipated reduction in service charge transfers to general revenue of approximately $400 per year, due to the revenue reduction. Additionally, the Commission will no longer need a continuing education course accreditation program administrator resulting in an approximately $22,000 in reduced expenditures.[41]

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.

[41] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 CS/HB 915 (Mar. 24, 2015).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The elimination of s. 553.841(4) and (7), F.S., relating to the approval of advanced modules for building code education may create some confusion as to the availability of building code education courses that satisfy the statutory continuing education requirements for certain licenses. However, ss. 553.781(3) and 553.841(3), F.S., appear to provide for the development of building code-related continuing education courses. Section 553.781(3), F.S., provides that any fines collected by a local jurisdiction ... shall be used initially to help set up the parts of the reporting system for which such local jurisdiction is responsible. Any remaining moneys shall be used solely for enforcing the Florida Building Code, licensing activities relating to the Florida Building Code, or education and training on the Florida Building Code. Section 553.841(3)(a), F.S., provides that a program that is provided by a private, nonprofit corporation that is under contract with DBPR must "develop and deliver building code-related education, training, and outreach."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Tuesday, March 10, 2015, the Business & Professions Subcommittee adopted amendments and reported the bill favorably as a committee substitute. The committee substitute differs from the filed bill by:

- Making several adjustments to the training and experience required to take the certification exam for building code inspector, plans examiner, and building code administrator;
- Amending the definition of "contractor" to allow licensed Category I liquefied petroleum gas dealers, LP gas installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of an existing water heater;
- Adding Division II contractors to the Florida Homeowners' Construction Recovery Fund section, which would allow homeowners to make a claim and receive restitution from the fund when they have been harmed by a Division II contractor, subject to certain requirements and financial caps;
- Exempting low-voltage landscape lighting with a cord and a plug from having to be installed by a licensed electrical contractor;
- Amending list of documents that local enforcement agencies must abide by in order to obtain or retain a swimming pool operating permit to be consistent with a similar section that is being amended in the bill;
- Providing funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Code informal interpretations;
- Clarifying that water heater installation requires a water leak detection device if it is being installed or replaced in a conditioned space or attic;
- Authorizing local building officials to issue phased permits for the construction of the foundation or any other part of a building or structure before the construction documents for the whole building or structure have been submitted; and
- Requiring local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals, which includes energy raters and HVAC contractors.

On Tuesday, April 7, 2015, the Government Operations Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Removes language from the bill relating to the Department of Health's regulation of public pools.
- Adds a portable pool sponsored or provided by school districts used for swimming lessons shall be considered a private pool and not be regulated as a public pool.
- Removes language relating to water heater leak detection devices.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to building codes; amending s. 468.609, F.S.; revising the certification examination requirements for building code inspectors, plans examiners, and building code administrators; requiring the Florida Building Code Administrators and Inspectors Board to provide for issuance of certain provisional certificates; amending s. 489.105, F.S.; revising the definition of the term "plumbing contractor"; amending s. 489.1401, F.S.; revising legislative intent with respect to the purpose of the Florida Homeowners' Construction Recovery Fund; providing legislative intent that Division II contractors set apart funds to participate in the fund; amending s. 489.1402, F.S.; revising definitions; amending s. 489.141, F.S.; prohibiting certain claimants from making a claim against the recovery fund for certain contracts entered into before a specified date; amending s. 489.1425, F.S.; revising a notification provided by contractors to certain residential property owners to state that payment from the recovery fund is limited; amending s. 489.143, F.S.; revising provisions concerning payments from the recovery fund; specifying claim amounts for certain contracts entered into before or after specified dates; providing aggregate caps for

payments; amending s. 489.503, F.S.; exempting certain low-voltage landscape lighting from licensed electrical contractor installation requirements; amending s. 514.011, F.S.; revising the definition of the term "private pool" to include portable pools used for specified purposes; amending s. 514.0115, F.S.; exempting portable pools when used for specified purposes from being regulated as public pools; amending s. 514.031, F.S.; prohibiting portable pools from being used as public pools unless used for certain purposes; amending s. 553.721, F.S.; directing the Florida Building Code Compliance and Mitigation Program to fund from existing resources the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup; providing a limitation; requiring that a specified amount of funds from the surcharge be used to fund certain Florida Fire Code informal interpretations; amending s. 553.79, F.S.; authorizing a building official to issue a permit for the construction of the foundation or any other part of a building or structure before the construction documents for the whole building or structure have been submitted; providing that the holder of such permit shall begin building at the holder's own risk with the building operation and without assurance that a permit for the entire

structure will be granted; amending s. 553.841, F.S.; removing provisions related to the development of advanced courses with respect to the Florida Building Code Compliance and Mitigation Program and the accreditation of courses related to the Florida Building Code; amending s. 553.842, F.S.; providing that Underwriters Laboratories, LLC, is an approved evaluation entity; amending s. 553.908, F.S.; requiring local enforcement agencies to accept duct and air infiltration tests conducted in accordance with certain guidelines by specified individuals; providing an effective date.

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

Section 1. Subsections (2), (3), and (7) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(a) Is at least 18 years of age.

(b) Is of good moral character.

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate ~~as~~ issued by the board~~,~~ or a firesafety ~~fire safety~~ inspector license issued pursuant to chapter 633, has a minimum of 3 ~~5~~ years' verifiable full-time experience in inspection or plan review, and satisfactorily completes a building code inspector or plans examiner training program that provides at least 100 hours but not more ~~of not less~~ than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program; ~~or~~

5. Demonstrates a combination of the completion of an

approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections, and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program that provides at least 200 hours but not more ~~of not less~~ than 300 hours of cross-training which is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least ~~not less than~~ 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program; or

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633 and:

a. Has at least 5 years of verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 5 years' verifiable

full-time experience as a firesafety inspector licensed pursuant to chapter 633; and

b. Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 40 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category.

(3) A person may take the examination for certification as a building code administrator pursuant to this part if the person:

(a) Is at least 18 years of age.

(b) Is of good moral character.

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 7 ~~10~~ years' combined experience as an architect, engineer, plans examiner, building code inspector, firesafety inspector certified under s. 633.216, registered or certified contractor, or construction superintendent, with at least 3 ~~5~~ years of such experience in supervisory positions; or

2. Demonstrates a combination of postsecondary education in the field of construction or related field, no more than 5 years of which may be applied, and experience as an architect,

engineer, plans examiner, building code inspector, firesafety inspector certified under s. 633.216, registered or certified contractor, or construction superintendent which totals 7 ~~10~~ years, with at least 3 ~~5~~ years of such total being experience in supervisory positions. In addition, the applicant must have completed training consisting of at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder.

(7)(a) The board shall ~~may~~ provide for the issuance of provisional certificates valid for 1 year, as specified by board rule, to any newly employed or promoted building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3). The provisional license may be renewed by the board for just cause; however, a provisional license is not valid for a period longer than 3 years.

(b) No building code administrator, plans examiner, or building code inspector may have a provisional certificate extended beyond the specified period by renewal or otherwise.

(c) The board shall ~~may~~ provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, the

supervision of such person on a consulting or advisory basis, or other matters as the board may deem necessary to protect the public safety and health.

(d) A newly employed or hired person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted if such person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found such person qualified for a provisional certificate. Direct supervision and the determination of qualifications may also be provided by a building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

Section 2. Paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the

paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also

includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6)~~,~~ and does not require certification or registration under this part for a category I liquefied petroleum gas dealer, LP gas installer, or specialty installer who is licensed under chapter 527 or an ~~of any~~ authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and

install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 3. Subsections (2) and (3) of section 489.1401, Florida Statutes, are amended to read:

489.1401 Legislative intent.—

(2) It is the intent of the Legislature that the sole purpose of the Florida Homeowners' Construction Recovery Fund is to compensate an ~~any~~ aggrieved claimant who contracted for the construction or improvement of the homeowner's residence located within this state and who has obtained a final judgment in a ~~any~~ court of competent jurisdiction, was awarded restitution by the Construction Industry Licensing Board, or received an award in arbitration against a licensee on grounds of financial mismanagement or misconduct, abandoning a construction project, or making a false statement with respect to a project. Such grievance must arise ~~and arising~~ directly out of a ~~any~~ transaction conducted when the judgment debtor was licensed and must involve an act ~~performed any of the activities~~ enumerated under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence~~.

(3) It is the intent of the Legislature that Division I and Division II contractors set apart funds for the specific objective of participating in the fund.

Section 4. Paragraphs (d), (i), (k), and (l) of subsection (1) of section 489.1402, Florida Statutes, are amended to read:

489.1402 Homeowners' Construction Recovery Fund;

definitions.—

(1) The following definitions apply to ss. 489.140-489.144:

(d) "Contractor" means a Division I or Division II contractor performing his or her respective services described in s. 489.105(3)(a)-(q) ~~489.105(3)(a)-(c)~~.

(i) "Residence" means a single-family residence, an individual residential condominium or cooperative unit, or a residential building containing not more than two residential units in which the owner contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement.

(k) "Same transaction" means a contract, or a ~~any~~ series of contracts, between a claimant and a contractor or qualified business, when such contract or contracts involve the same property or contiguous properties and are entered into either at one time or serially.

(l) "Valid and current license," for the purpose of s. 489.141(2)(d), means a ~~any~~ license issued pursuant to this part to a licensee, including a license in an active, inactive, delinquent, or suspended status.

Section 5. Subsections (1) and (2) of section 489.141, Florida Statutes, are amended to read:

489.141 Conditions for recovery; eligibility.—

(1) A ~~Any~~ claimant is eligible to seek recovery from the recovery fund after making ~~having made~~ a claim and exhausting

the limits of any available bond, cash bond, surety, guarantee, warranty, letter of credit, or policy of insurance if~~, provided that~~ each of the following conditions is satisfied:

(a) The claimant has received a final judgment in a court of competent jurisdiction in this state or has received an award in arbitration or the Construction Industry Licensing Board has issued a final order directing the licensee to pay restitution to the claimant. The board may waive this requirement if:

1. The claimant is unable to secure a final judgment against the licensee due to the death of the licensee; or

2. The claimant has sought to have assets involving the transaction that gave rise to the claim removed from the bankruptcy proceedings so that the matter might be heard in a court of competent jurisdiction in this state and, after due diligence, the claimant is precluded by action of the bankruptcy court from securing a final judgment against the licensee.

(b) The judgment, award, or restitution is based upon a violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

(c) The violation was committed by a licensee.

(d) The judgment, award, or restitution order specifies the actual damages suffered as a consequence of such violation.

(e) The contract was executed and the violation occurred on or after July 1, 1993, and provided that:

1. The claimant has caused to be issued a writ of execution upon such judgment, and the officer executing the writ has made a return showing that no personal or real property of

the judgment debtor or licensee liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's or licensee's property pursuant to such execution was insufficient to satisfy the judgment;

2. If the claimant is unable to comply with subparagraph 1. for a valid reason to be determined by the board, the claimant has made all reasonable searches and inquiries to ascertain whether the judgment debtor or licensee is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by his or her search has discovered no property or assets or has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment; and

3. The claimant has made a diligent attempt, as defined by board rule, to collect the restitution awarded by the board.

(f) A claim for recovery is made within 1 year after the conclusion of any civil, criminal, or administrative action or award in arbitration based on the act. This paragraph applies to any claim filed with the board after October 1, 1998.

(g) Any amounts recovered by the claimant from the judgment debtor or licensee, or from any other source, have been applied to the damages awarded by the court or the amount of restitution ordered by the board.

(h) The claimant is not a person who is precluded by this act from making a claim for recovery.

(2) A claimant is not qualified to make a claim for recovery from the recovery fund~~,~~ if:

(a) The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;

(b) The claimant is a licensee who acted as the contractor in the transaction that ~~which~~ is the subject of the claim;

(c) The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;

(d) The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract;

(e) The claimant was associated in a business relationship with the licensee other than the contract at issue; or

~~(f) The claimant has suffered damages as the result of making improper payments to a contractor as defined in part I of chapter 713; or~~

(f)~~(g)~~ The claimant has entered into a contract ~~contracted~~ with a licensee to perform a scope of work described in s. 489.105(3)(d)-(q) before July 1, 2015 ~~489.105(3)(d)-(p)~~.

Section 6. Subsection (1) of section 489.1425, Florida Statutes, is amended to read:

489.1425 Duty of contractor to notify residential property owner of recovery fund.—

(1) Each ~~Any~~ agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed $2,500. The written statement must be substantially in the following form:

FLORIDA HOMEOWNERS' CONSTRUCTION
RECOVERY FUND

PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

The statement must ~~shall~~ be immediately followed by the board's address and telephone number as established by board rule.

Section 7. Section 489.143, Florida Statutes, is amended to read:

489.143 Payment from the fund.—

(1) The fund shall be disbursed as provided in s. 489.141 on a final order of the board.

(2) A ~~Any~~ claimant who meets all of the conditions

prescribed in s. 489.141 may apply to the board to cause payment to be made to a claimant from the recovery fund in an amount equal to the judgment, award, or restitution order or $25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant, and only up to the maximum payment allowed for each respective Division I and Division II claim. Payment from the fund for other costs related to or pursuant to civil proceedings such as postjudgment interest, attorney ~~attorney's~~ fees, court costs, medical damages, and punitive damages is prohibited. The recovery fund is not obligated to pay a ~~any~~ judgment, an award, or a restitution order, or any portion thereof, which is not expressly based on one of the grounds for recovery set forth in s. 489.141.

(3) Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, payment from the recovery fund shall be subject to a $50,000 maximum payment for each Division I claim. Beginning January 1, 2016, for each Division II contract entered into on or after July 1, 2015, payment from the recovery fund shall be subject to a $15,000 maximum payment for each Division II claim.

(4) ~~(3)~~ Upon receipt by a claimant under subsection (2) of payment from the recovery fund, the claimant shall assign his or her additional right, title, and interest in the judgment, award, or restitution order, to the extent of such payment, to

the board, and thereupon the board shall be subrogated to the right, title, and interest of the claimant; and any amount subsequently recovered on the judgment, award, or restitution order, to the extent of the right, title, and interest of the board therein, shall be for the purpose of reimbursing the recovery fund.

(5) ~~(4)~~ Payments for claims arising out of the same transaction shall be limited, in the aggregate, to the lesser of the judgment, award, or restitution order or the maximum payment allowed for a Division I or Division II claim, regardless of the number of claimants involved in the transaction.

(6) ~~(5)~~ For contracts entered into before July 1, 2004, payments for claims against any one licensee may ~~shall~~ not exceed, in the aggregate, $100,000 annually, up to a total aggregate of $250,000. For any claim approved by the board which is in excess of the annual cap, the amount in excess of $100,000 up to the total aggregate cap of $250,000 is eligible for payment in the next and succeeding fiscal years, but only after all claims for the then-current calendar year have been paid. Payments may not exceed the aggregate annual or per claimant limits under law. Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject only to a total aggregate cap of $500,000 for each Division I licensee. Beginning January 1, 2016, for each Division II contract entered into on or after July 1, 2015, payment from the recovery fund is subject only to

a total aggregate cap of $150,000 for each Division II licensee.

(7) ~~(6)~~ Claims shall be paid in the order filed, up to the aggregate limits for each transaction and licensee and to the limits of the amount appropriated to pay claims against the fund ~~for the fiscal year in which the claims were filed~~. Payments may not exceed the total aggregate cap per license or per claimant limits under this section.

(8) ~~(7)~~ If the annual appropriation is exhausted with claims pending, such claims shall be carried forward to the next fiscal year. Any moneys in excess of pending claims remaining in the recovery fund at the end of the fiscal year shall be paid as provided in s. 468.631.

(9) ~~(8)~~ Upon the payment of any amount from the recovery fund in settlement of a claim in satisfaction of a judgment, award, or restitution order against a licensee as described in s. 489.141, the license of such licensee shall be automatically suspended, without further administrative action, upon the date of payment from the fund. The license of such licensee may ~~shall~~ not be reinstated until he or she has repaid in full, plus interest, the amount paid from the fund. A discharge of bankruptcy does not relieve a person from the penalties and disabilities provided in this section.

(10) ~~(9)~~ A ~~Any~~ firm, a corporation, a partnership, or an association, or a ~~any~~ person acting in his or her individual capacity, who aids, abets, solicits, or conspires with another ~~any~~ person to knowingly present or cause to be presented a ~~any~~

false or fraudulent claim for the payment of a loss under this act commits ~~is guilty of~~ a third-degree felony, punishable as provided in s. 775.082 or s. 775.084 and by a fine of up to ~~not exceeding~~ $30,000~~,~~ unless the value of the fraud exceeds that amount, ~~$30,000~~ in which event the fine may not exceed double the value of the fraud.

(11)~~(10)~~ Each payment ~~All payments~~ and disbursement ~~disbursements~~ from the recovery fund shall be made by the Chief Financial Officer upon a voucher signed by the secretary of the department or the secretary's designee.

Section 8. Subsection (24) is added to section 489.503, Florida Statutes, to read:

489.503 Exemptions.—This part does not apply to:

(24) A person who installs low-voltage landscape lighting that contains a factory-installed electrical cord with plug and does not require installation, wiring, or other modification to the electrical wiring of a structure.

Section 9. Subsection (3) of section 514.011, Florida Statutes, is amended to read:

514.011 Definitions.—As used in this chapter:

(3) "Private pool" means a facility used only by an individual, family, or living unit members and their guests which does not serve any type of cooperative housing or joint tenancy of five or more living units. Notwithstanding any other provision of law, a portable pool used exclusively for providing swimming lessons or related instruction in support of an

established "learn to swim" educational program sponsored or provided by a school district is a private pool for purposes of the exemptions provided in s. 514.0115.

Section 10. Subsection (3) of section 514.0115, Florida Statutes, is amended to read:

514.0115 Exemptions from supervision or regulation; variances.—

(3) A private pool used for instructional purposes in swimming shall not be regulated as a public pool. In addition, a portable pool used for instructional purposes or in support of an established "learn to swim" program shall not be regulated as a public pool.

Section 11. Subsection (5) of section 514.031, Florida Statutes, is amended to read:

514.031 Permit necessary to operate public swimming pool.—

(5) An owner or operator of a public swimming pool, including, but not limited to, a spa, wading, or special purpose pool, to which admittance is obtained by membership for a fee shall post in a prominent location within the facility the most recent pool inspection report issued by the department pertaining to the health and safety conditions of such facility. The report shall be legible and readily accessible to members or potential members. The department shall adopt rules to enforce this subsection. A portable pool may not be used as a public pool unless exempt from regulation under s. 514.0115.

Section 12. Section 553.721, Florida Statutes, is amended

to read:

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1.5 percent of the permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be $2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. Funds allocated to the Florida Building Code Compliance and Mitigation Program shall be $925,000 each fiscal year. The Florida Building

Code Compliance and Mitigation Program shall fund the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed $30,000 in the 2015-2016 fiscal year. Funds collected from the surcharge shall also be used to fund Florida Fire Code informal interpretations managed by the State Fire Marshal and shall be limited to $15,000 each fiscal year. The funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health and the State Fire Marshal shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

Section 13. Subsection (6) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(6) A permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the Florida Building Commission within the Florida Building Code. However, the code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the

foundation only, and such standards shall take effect concurrent with the first effective date of the Florida Building Code. After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. No other agency review or approval may be required before the issuance of a phased permit due to the fact that the project will need all the necessary outside agencies' reviews and approvals before the issuance of a master building permit. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

Section 14. Subsections (4) and (7) of section 553.841, Florida Statutes, are amended, to read:

553.841 Building code compliance and mitigation program.—

~~(4) In administering the Florida Building Code Compliance and Mitigation Program, the department shall maintain, update, develop, or cause to be developed advanced modules designed for use by each profession.~~

~~(7) The Florida Building Commission shall provide by rule for the accreditation of courses related to the Florida Building Code by accreditors approved by the commission. The commission~~

~~shall establish qualifications of accreditors and criteria for the accreditation of courses by rule. The commission may revoke the accreditation of a course by an accreditor if the accreditation is demonstrated to violate this part or the rules of the commission.~~

Section 15. Paragraph (a) of subsection (8) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved pursuant to this paragraph. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

Section 16. Section 553.908, Florida Statutes, is amended to read:

553.908 Inspection.—Before construction or renovation is

completed, the local enforcement agency shall inspect buildings for compliance with the standards of this part. The local enforcement agency shall accept duct and air infiltration tests conducted in accordance with the Florida Building Code-Energy Conservation by individuals certified as set forth in s. 553.993(5) or (7) or individuals licensed under s. 489.105(3)(f), (g), or (i) who perform duct testing. The local enforcement agency may accept inspections in whole or in part by individuals certified in accordance with s. 553.993(5) or (7) or by individuals certified as energy inspectors by the International Code Council, provided that the inspection complies with the Florida Building Code-Energy Conservation.

Section 17. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1025 Firesafety for Agricultural Buildings
SPONSOR(S): Insurance & Banking Subcommittee; Raburn and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1148

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Gonzalez	Cooper
2) Regulatory Affairs Committee		Gonzalez	Hamon

SUMMARY ANALYSIS

The Florida Fire Prevention Code (FFPC) contains all firesafety laws and rules that pertain to public and private buildings and the enforcement of such laws and rules. It is adopted by rule by the State Fire Marshal.

Under current law, a structure located on property classified as agricultural is exempt from the FFPC if the occupancy is limited by the property owner to no more than 35 persons. Tents up to 30 feet by 30 feet are also exempt. The local fire officials are required to fashion reasonable alternatives that afford an equivalent degree of lifesafety and safety of property if it is not practical to apply any or all of the provisions of the FFPC.

A nonresidential farm building is any building that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, farm office, storage building, or poultry house. Nonresidential farm buildings are currently exempt from the Florida Building Code and any county or municipal code or fee, but are not exempt from the FFPC.

This bill exempts agricultural pole barns, which are nonresidential farm buildings in which 90 percent or more of the perimeter walls are permanently open, from the FFPC without restrictions. It also exempts certain other nonresidential farm buildings from the FFPC if the building is used by the owner for assembly, business, or mercantile occupancy, no more than 20 times per year, and each occupancy lasts no longer than 72 hours and has no more than 150 persons in attendance. The building must also provide 7 or 15 square feet per person in attendance, depending on the concentration of tables and chairs, it must provide at least two exits of specified dimensions, and the storage of combustible or flammable liquids during an occupancy is not permitted.

The bill revises the exemption of tents from the FFPC from up to 30 feet by 30 feet to up to 900 square feet. The bill also allows local fire officials to consider the Fire Safety Evaluation System as an acceptable source in identifying reasonable alternatives to current standards under s. 633.208, F.S.

The bill has minimal to no fiscal impact on state government.

The bill should have a minimal negative fiscal impact to local governments associated with the collection of fines for violations of the FFPC. However, this impact may be offset by a minimal positive fiscal impact on local government associated with decreased costs for inspections of certain nonresidential farm buildings covered by the bill.

The bill should have a minimal positive fiscal impact on the private sector associated with decreased fines for violations of the FFPC by certain nonresidential farm buildings covered by the bill.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Chief Financial Officer is designated as the "State Fire Marshal." The State Fire Marshal is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to firesafety and has the responsibility to minimize the loss of life and property in this state due to fire.[1]

The Florida Fire Prevention Code (FFPC) contains all firesafety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules. It is adopted by rule, pursuant to ch. 120, F.S., by the State Fire Marshal. The State Fire Marshal adopts a new edition of the FFPC every third year.[2]

Under current law, a structure located on property that is classified as agricultural, which is part of a farming or ranching operation, is exempt from the FFPC, including the national codes and Life Safety Code, if the occupancy is limited by the property owner to no more than 35 persons and is not used by the public for direct sales or as an educational outreach facility. Current law also exempts tents up to 30 feet by 30 feet from the FFPC, including the national codes.[3]

Nonresidential farm building is defined under s. 604.50, F.S., as any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm for the purposes of the Florida Building Code[4], or that is classified as agricultural land for assessment purposes[5], is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Under Florida law, nonresidential farm buildings are exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.[6] They are not currently exempt from the FFPC.

Additionally, since the legislature recognizes that it is not always practical to apply any or all of the provisions of the FFPC, under the minimum firesafety standards, the local fire officials shall apply the applicable firesafety code for existing buildings to the extent practical to ensure a reasonable degree of lifesafety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of lifesafety and safety of property.[7]

Effect of Bill

The bill exempts agricultural pole barns, which are nonresidential farm buildings in which 90 percent or more of the perimeter walls are permanently open, from the FFPC without restrictions. It also revises the description of structures currently exempt from the FFPC in which the occupancy is limited by the property owner to no more than 35 persons, to nonresidential farm buildings. The current exemption of agricultural structures is expanded to include the use for direct sales.

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[1] s. 633.104, F.S.
[2] s. 633.202, F.S.
[3] s. 633.202(16), F.S.
[4] s. 533.73(10)(c), F.S.
[5] s. 193.461, F.S.
[6] s. 604.50(1), F.S.
[7] s. 633.208, F.S.

This bill also exempts certain other nonresidential farm buildings from the FFPC if the building is used by the owner for assembly, business, or mercantile occupancy, no more than 20 times per year. Business occupancy is defined by the FFPC as an occupancy used for account and record keeping, or the transaction of business other than mercantile. Mercantile occupancy is defined as an occupancy used for the display and sale of merchandise.

Additionally, under the new exemption created by the bill, the property owner must notify the local fire official of each occupancy at least 7 days before, each occupancy may last no longer than 72 consecutive hours and may have no more than 150 persons in attendance at one time. The building must also provide 7 or 15 square feet per person in attendance, depending on the concentration of tables and chairs, it must provide at least two exits of specified dimensions, and the storage of combustible or flammable liquids during an occupancy is not permitted.

The bill revises the exemption of tents from the FFPC from up to 30 feet by 30 feet to up to 900 square feet. The bill also allows local fire officials to consider the Fire Safety Evaluation System as an acceptable source in identifying reasonable alternatives to current standards under s. 633.208, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 633.202, F.S., relating to exemptions from the Florida Fire Prevention Code.

Section 2: Amends s. 633.208, F.S., relating to the minimum fire safety standards and alternatives to the firesafety code.

Section 3: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Uncertain. The Department of Agriculture and Consumers Services believes that participation in the workgroup and rulemaking process will have minimal to no fiscal impact on the department as they anticipate using current staff and resources

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Uncertain. Minimal negative fiscal impact on local governments, equal to positive impact on private sector, associated with decreased collection of fines for violations of the FFPC due to exemption of certain nonresidential farm buildings covered by the bill.

2. Expenditures:

   Uncertain. Minimal positive fiscal impact on local governments associated with decreased cost of inspections of nonresidential farming buildings covered by the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Uncertain. Minimal positive fiscal impact on the private sector associated with decreased fines for violations of the FFPC due to exemption of certain nonresidential farm buildings covered by the bill.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Insurance & Banking Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment made the following changes:

- Removed the current limitation on direct sales for exemptions of agricultural structures.
- Required the property owner to notify the local fire official of each occupancy at least 7 days before the occupancy.
- Clarified that the nonresidential farm building may not be used for lodging purposes.
- Clarified that the only secondary uses exempt from the Florida Fire Prevention Code under the bill are assembly, business, and mercantile occupancy.
- Clarified that each occupancy may last no longer than 72 consecutive hours.
- Clarified that each occupancy may have no more than 150 persons in attendance at one time.
- Provided that the exempt nonresidential farm building must have at least two exits of a certain size.
- Provided that the exempt nonresidential farm building must provide at least 7 square feet per person in attendance if the building is unconcentrated with chairs and tables and 15 square feet per person if the building is concentrated with chairs and tables.
- Provided that the storage of combustible or flammable liquids in the nonresidential farm building is not permitted during an event.
- Removed language requiring the State Fire Marshal to convene a workgroup, conduct a study, and initiate rulemaking.

The staff analysis is drafted to reflect the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to firesafety for agricultural buildings; amending s. 633.202, F.S.; providing definitions; exempting certain nonresidential farm buildings from the Florida Fire Prevention Code under specified circumstances; exempting agricultural pole barns from the Florida Fire Prevention Code; amending s. 633.208, F.S.; authorizing local fire officials to consider specific chapters of the Florida Fire Prevention Code to find alternative low-cost reasonable options for firesafety for certain buildings; providing an effective date.

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

Section 1. Subsection (16) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(16)(a) As used in this subsection, the term:

1. "Agricultural pole barn" means a nonresidential farm building in which 90 percent or more of the perimeter walls are permanently open and allow free ingress and egress.

2. "Nonresidential farm building" has the same meaning as provided in s. 604.50.

(b) A nonresidential farm building ~~structure, located on property that is classified for ad valorem purposes as~~

~~agricultural, which is part of a farming or ranching operation,~~ in which the occupancy is limited by the property owner to no more than 35 persons~~,~~ and which is not used by the public ~~for direct sales or~~ as an educational outreach facility~~,~~ is exempt from the Florida Fire Prevention Code, including the national codes and Life Safety Code incorporated by reference. ~~This paragraph does not include structures used for residential or assembly occupancies, as defined in the Florida Fire Prevention Code.~~

(c) Notwithstanding any other provision of law, a nonresidential farm building is exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference, if the following conditions are met:

1. The owner of the property notifies the local fire official of each occupancy that meets the conditions of this section at least 7 days before the occupancy. The local fire official shall not require a filing fee for the notification.

2. The nonresidential farm building is used by the owner only for the following secondary purposes: assembly, business, or mercantile occupancy, as defined in the Florida Fire Prevention Code, no more than 20 times per year, and is not used for lodging purposes.

3. Each occupancy lasts no longer than 72 consecutive hours and has no more than 150 persons in attendance at one time.

4. There are at least two means of egress or openings of at least 36 inches in width and 80 inches in height that open in the direction of the exit travel.

5. The nonresidential farm building provides at least 7 square feet per person in attendance if the building is unconcentrated with chairs, tables, or other obstacles and 15 square feet per person in attendance if the building is concentrated with chairs, tables, or other obstacles.

6. The storage of combustible or flammable liquids inside the nonresidential farm building during each occupancy is not permitted.

(d) Notwithstanding any other provision of law, an agricultural pole barn is exempt from the Florida Fire Prevention Code, including the national fire codes and the Life Safety Code incorporated by reference.

Section 2. Subsection (5) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(5) With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Florida Fire Prevention Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety. Before ~~Prior to~~ applying the minimum firesafety code to an existing building, the local fire official shall determine that a threat to lifesafety or property exists. If a threat to lifesafety or

property exists, the fire official shall apply the applicable firesafety code for existing buildings to the extent practical to ensure ~~assure~~ a reasonable degree of lifesafety and safety of property or the fire official shall fashion a reasonable alternative that ~~which~~ affords an equivalent degree of lifesafety and safety of property. The local fire official may consider the firesafety evaluation system found in the current edition of the National Fire Protection Association, "NFPA 101A: Guide on Alternative Solutions to Life Safety" as adopted by the State Fire Marshal, to identify acceptable low-cost alternatives. The decision of the local fire official may be appealed to the local administrative board described in s. 553.73.

Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1141 Natural Gas Rebate Program
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Business & Professions Subcommittee; Ray and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N, As CS	Whittier	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N, As CS	Lolley	Massengale
3) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

Currently, there is not an incentive program in Florida for those who are considering converting a locomotive, ship, or high-horsepower engine to natural gas; however, in 2013, the Legislature created the Natural Gas Fuel Fleet Vehicle Rebate Program within the Department of Agriculture and Consumer Services (DACS) to award rebates for up to 50 percent of the eligible costs incurred in the conversion or retrofitting of diesel- or gasoline-powered motor vehicles to natural gas-powered.

The bill creates the Heavy Transportation Industry Natural Gas Rebate Program within DACS. Similar to the Natural Gas Fuel Fleet Vehicle Rebate Program, the program provides for the award of rebates for up to 50 percent of the eligible costs of converting traditionally-fueled locomotives, waterborne ships, and high-horsepower engines to natural gas-fueled or for up to 50 percent of the eligible costs for the purchase of such eligible vehicles or vessels. Applicants must have placed these locomotives, ships, and engines into service on or after July 1, 2015, for commercial business or governmental purposes. An applicant is eligible to receive a maximum rebate of $500,000 per vehicle up to a total of $1 million per fiscal year.

The bill requires DACS to determine and publish on its website, on an ongoing basis, the amount of available funding for rebates remaining in each fiscal year and to provide, by December 1, 2016, and by December 1 of each subsequent year of the program, an annual assessment of the use of the rebate program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability.

The bill appropriates unobligated general revenue funds on June 30 each fiscal year from the Natural Gas Fuel Fleet Vehicle Rebate Program to the Heavy Transportation Industry Natural Gas Rebate Program for the subsequent fiscal year. See *Fiscal Comments*.

The bill may have a significant positive fiscal impact on the private sector.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

U.S. Environmental Protection Agency Standards

The U.S. Environmental Protection Agency (EPA) has adopted very stringent standards to reduce emissions of diesel particulate matter (PM) and nitrogen oxide (NOx) from locomotives and marine diesel engines. The EPA's goal is to tighten emissions on existing engines when remanufactured and set long term standards referred to as Tier-4 standards.[1]

According to the EPA, there is a coordinated strategy that includes Clean Air Act standards, as well as implementation of the international standards for marine engines and their fuels contained in Annex VI to the International Convention on the Prevention of Pollution from Ships (a treaty called MARPOL).[2, 3]

EPA has adopted a similar approach to regulating "nonroad" transportation, high-horsepower engines, which are used in machines that perform a wide range of jobs. High-horsepower engines include excavators and other construction equipment; farm tractors and other agricultural equipment; heavy forklifts; and airport ground service equipment. Nonroad sources are regulated by type, size, weight, use, and/or horsepower.[4]

The EPA estimates that by 2030, compliance with this standard will result in an annual reduction of 800,000 tons of NOx emissions and 27,000 tons of PM emissions;[5] however, compliance with these emissions mandates will be costly for the heavy transportation industry. The three most common methods of achieving these goals are:

- Using costly ultra-low sulfur diesel (road grade diesel),
- Installing scrubber systems on the engines which are similar to those of coal power plants, or
- Using natural gas (the lowest cost alternative).[6]

Florida does not have a Liquefied Natural Gas (LNG) plant at this time and transports by truck any railroad LNG from Macon, Georgia, to destinations in Florida. Any railroad or ship LNG needs must be met by transporting the commodity from out of state. However, as a result of the growing demands for natural gas, several companies are looking to build LNG plants but need a specific demand for the capital intensive projects. The Florida Natural Gas Association asserts, "This legislation will help focus the use of liquefied natural gas as the means to meet the emission mandates and aid the guarantee of

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[1] Email from a representative of the Florida Natural Gas Association, RE: Rail and maritime industries and EPA's emission mandates (Mar. 13, 2015).

[2] United States Environmental Protection Agency, Office of Transportation and Air Quality, *EPA Finalizes More Stringent Standards for Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder*, pg. 1 (Dec. 2009), *available at* http://www.epa.gov/otaq/regs/nonroad/marine/ci/420f09068.pdf.

[3] According to the EPA, the MARPOL Annex VI contains a program that applies stringent engine emission standards and fuel sulfur limits to ships that operate in specially designated Emission Control Areas (ECAs). The quality of fuel that complies with the ECA standard changes over time. The United States has obtained designation for the North American ECA and the US Caribbean ECA. The effective dates of the standards for an area depend on the area's designation date. By 2030, this coordinated strategy is expected to reduce annual emissions of NOx in the United States by about 1.2 million tons and PM emissions by about 143,000 tons. Source: United States Environmental Protection Agency, *Ocean Vessels and Large Ships*, http://www.epa.gov/otaq/oceanvessels.htm (last visited Mar. 13, 2015).

[4] Email from staff of the Florida Department of Environmental Protection, RE: high-horsepower engines (Mar. 20, 2015).

[5] Email from a representative of the Florida Natural Gas Association, RE: Rail and maritime industries and EPA's emission mandates (Mar. 13, 2015).

[6] *Id.*

liquefied natural gas sources in Florida which will provide fuel for our growing trade and tourism industries."[7]

Natural Gas Fuel

During the past several years, exploration has uncovered a supply of natural gas in the United States which has resulted in a reduction in the price of natural gas and an increased interest in natural gas-powered vehicles, fuel plants, and refueling infrastructure.

Natural gas is touted as the cleanest of the fossil fuels. The Natural Gas Supply Association points out that, "Pollutants emitted in the United States, particularly from the combustion of fossil fuels, have led to the development of many pressing environmental problems. Natural gas, emitting fewer harmful chemicals into the atmosphere than other fossil fuels, can help to mitigate some of these environmental issues." These concerns include:

- Greenhouse Gas Emissions;
- Smog, Air Quality and Acid Rain;
- Industrial and Electric Generation Emissions; and
- Pollution from the Transportation Sector.[8]

When compared using equivalent units of measure, natural gas is less expensive per gallon than traditional fuels. The U.S. Department of Energy reports that in the Fall of 2014, the national average price for gasoline was $3.34 a gallon, the price for diesel was $3.77 a gallon, and for a gasoline gallon equivalent of compressed natural gas was $2.16.[9]

Florida East Coast Industries (FECI) reported that, in April 2014, using equivalent units of measure, the national price for railroad diesel was $2.95 a gallon and a diesel gallon equivalent of railroad LNG was $1.47.[10]

Currently, most locomotives use diesel and most ships today use bunker fuel which is crude oil.[11] To refuel locomotives with LNG, railroads use a tender that sits between two locomotives. There are 14 railroads in Florida.[12] Total diesel fuel used by railroads in Florida is approximately 70 million gallons a year, which is the equivalent of approximately 119 million gallons of natural gas.[13]

To refuel ships with LNG, another ship transports the LNG in ISO tanks to a port and then transfers the natural gas to the ship's fuel tank. Each ship requires about 25,000 to 30,000 gallons of natural gas per day, resulting in the need for approximately 10 million gallons annually per ship.[14] The FECI notes that, "... by converting ships to natural gas, you get not only the cost savings but significant environmental benefit since crude is a lot dirtier than natural gas."

Although initial savings in fuel costs may be offset by the cost of a natural gas vehicle, locomotive, ship, or high-horsepower engine over gasoline, diesel, or crude oil, cost savings are expected after a few years.

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[7] *Id.*
[8] NaturalGas.Org, http://www.naturalgas.org/environment/naturalgas/ (last visited Mar. 13, 2015).
[9] United States Department of Energy, *Clean Cities Alternative Fuel Price Report*, pp. 4-5 (Oct. 2014),*available at* http://www.afdc.energy.gov/uploads/publication/alternative_fuel_price_report_oct_2014.pdf.
[10] Email from a representative of Florida East Coast Industries, RE: Rail and maritime industries and liquefied natural gas (Mar. 14, 2015).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

Natural Gas Fuel Fleet Vehicle Rebate Program

Currently, there is not an incentive program in Florida for those who are considering converting a locomotive, ship, or high-horsepower engine to natural gas; however, in 2013, the Legislature created the Natural Gas Fuel Fleet Vehicle Rebate Program (rebate program) within the Department of Agriculture and Consumer Services (DACS), the purpose of which is to "help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state."[15]

Section 377.810, F.S., provides the following definitions under the program:

- "Conversion costs" means the excess cost associated with retrofitting a diesel- or gasoline-powered motor vehicle to a natural gas fuel-powered motor vehicle.
- "Department" means the Department of Agriculture and Consumer Services.
- "Eligible costs" means the cost of conversion or the incremental cost incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 5 years, of a natural gas fleet vehicle placed into service on or after July 1, 2013. The term does not include costs for project development, fueling stations, or other fueling infrastructure.
- "Fleet vehicles" means three or more motor vehicles registered in this state and used for commercial business or governmental purposes.
- "Incremental costs" means the excess costs associated with the purchase or lease of a natural gas fuel motor vehicle as compared to an equivalent diesel- or gasoline-powered motor vehicle.
- "Natural gas fuel" means any:
    - Liquefied petroleum gas product,
    - Compressed natural gas product, or
    - Combination thereof used in a motor vehicle as defined in s. 206.01(23).

  The term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.[16]

Beginning with Fiscal Year 2013-2014 and continuing through Fiscal Year 2017-2018 (five years), DACS is required to award rebates for the eligible costs of conversion or retrofitting of a diesel- or gasoline-powered motor vehicle to a natural gas fuel-powered motor vehicle. Specifically, DACS is to award rebates for up to 50 percent of the eligible costs of a natural gas fuel fleet vehicle or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2013. An applicant is eligible to receive a maximum rebate of $25,000 per vehicle up to a total of $250,000 per applicant per fiscal year, on a first-come, first-served basis. The DACS must reserve 40 percent of the annual allocation for governmental applicants and 60 percent for commercial applicants. The total amount that DACS can award for these rebates is $6 million[17] per year.[18]

The law provides steps for application and authorizes DACS to adopt rules to implement and administer the section by December 31, 2013.

The DACS must determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year and to provide, by October 1 each year, an annual assessment of the use of the rebate program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA). By January 31, 2016, OPPAGA is to provide a report reviewing the rebate

[15] s. 377.810(1), F.S.
[16] s. 377.810(2), F.S.
[17] The rebate is funded through the state's General Revenue Fund.
[18] s. 377.810(3), F.S.

program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.[19]

The Florida Natural Gas Vehicle Coalition reports that in Florida, the Natural Gas Fuel Fleet Vehicle Rebate Program has produced 1,820 jobs and $68 million in wages since its inception. When the legislation was passed there were approximately 32 Compressed Natural Gas (CNG) stations in Florida. According to Biofuels Digest, there are now 61 active CNG fueling stations with an additional 29 planned.[20] The Digest quotes a report from Fishkind & Associates that, "... a CNG station costs on average $1.5 million, meaning investment in CNG station infrastructure has been $91.5 million over the past two years."[21]

Effects of Proposed Changes

The bill creates the Heavy Transportation Industry Natural Gas Rebate Program within DACS. Similar to the Natural Gas Fuel Fleet Vehicle Rebate Program, the program provides for the award of rebates for up to 50 percent of the eligible costs for converting traditionally-fueled locomotives, waterborne ships, and high-horsepower engines to natural gas-fueled or for up to 50 percent of the eligible costs for the purchase of such eligible vehicles or vessels.

Applicants must have placed these locomotives, ships, and engines into service on or after July 1, 2015, for commercial business or governmental purposes. An applicant is eligible to receive a maximum rebate of $500,000 per vehicle up to a total of $1 million per fiscal year.

The purpose of the program is to help reduce transportation costs in the state, encourage the use of a domestic fuel source, and encourage heavy transportation investments that contribute to the economic growth of the state. The bill provides the following definitions under the program:

- "Conversion costs" means the costs associated with retrofitting a diesel-powered, gasoline-powered, or heavy-fuel-oil-powered locomotive, waterborne ship, or high-horsepower engine to a natural-gas-fuel-powered eligible vehicle or vessel.
- "Department" means the Department of Agriculture and Consumer Services.
- "Eligible costs" means the conversion costs or the incremental costs incurred by an applicant in connection with an investment in the conversion of, purchase of, or lease lasting at least 10 years of, a natural-gas-fuel-powered eligible vehicle or vessel. The term does not include costs for project development, fueling stations, or other fueling infrastructure.
- "Eligible vehicle or vessel" means a locomotive, waterborne ship, or high-horsepower engine used for transportation purposes, registered or licensed in the state, and used for commercial business or governmental purposes within the state. An eligible vehicle must be newly constructed or repowered and placed into service on or after July 1, 2015. A waterborne ship must be built and documented in the United States with a coastwise endorsement under 46 U.S.C. s. 55102 and be used to provide regular transportation of merchandise between one or more ports in the state and other domestic ports.
- "High-horsepower engine" means an engine that provides more than 1,000 horsepower and is used for nonhighway transportation purposes.
- "Incremental costs" means the excess costs associated with the purchase or lease of a natural-gas-fuel-powered eligible vehicle or vessel as compared to an equivalent diesel-powered, gasoline-powered, or heavy-fuel-oil-powered eligible vehicle or vessel.
- "Natural gas fuel" means any:
    - Liquefied petroleum gas product,

[19] s. 377.810(7) and (8), F.S.
[20] Isabel Lane, *Florida's natural gas vehicle incentive program creates 200% growth in fueling stations*, BIOFUELSDIGEST (Oct. 6, 2014), http://www.biofuelsdigest.com/bdigest/2014/10/06/floridas-natural-gas-vehicle-incentive-program-creates-200-growth-in-fueling-stations/.
[21] *Id.*

- Compressed natural gas product, or a
- Combination thereof used in an eligible vehicle or vessel.

The term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as:

- Natural gasoline,
- Butane gas,
- Propane gas, or
- Any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.

The term does not include natural gas or liquefied petroleum placed in a separate tank for cooking, heating, water heating, or electric generation.

The bill provides steps for application and authorizes DACS to adopt rules to implement and administer the program by December 31, 2015.

The DACS must determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year and must provide, by December 1, 2016, and by December 1 of each subsequent year of the program, an annual assessment of the use of the rebate program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA. The bill specifies items that are to be included in the assessment.

The bill appropriates unobligated general revenue funds at June 30 each fiscal year from the Natural Gas Fuel Fleet Vehicle Rebate Program to the Heavy Transportation Industry Natural Gas Rebate program in the subsequent fiscal year. See *Fiscal Comments*.

B. SECTION DIRECTORY:

Section 1. Creates the heavy transportation industry natural gas rebate program within DACS; defines terms; prescribes powers and duties of DACS; provides rebate eligibility requirements; provides limits on awards; authorizes DACS to adopt rules; requires DACS to publish certain information on its website; and directs DACS to submit an annual assessment to the Governor, the Legislature, and OPPAGA by a specified date.

Section 2. Provides an appropriation.

Section 3. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill appropriates unobligated general revenue funds on June 30 each fiscal year from the Natural Gas Fuel Fleet Vehicle Rebate Program to the Heavy Transportation Industry Natural Gas Rebate Program for the subsequent fiscal year. See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in increased savings for owners of locomotives, waterborne ships, or high-horsepower engines that convert from being powered by traditional fuels to being powered by natural gas fuel. It may lead to the creation of a natural gas plant and refueling infrastructure in the state.

D. FISCAL COMMENTS:

As of February 27, 2015, DACS' website reports a balance of $2,128,396.66 remaining in the Natural Gas Fuel Fleet Vehicle Rebate Program for Fiscal Year 2014-2015 which ends June 30, 2015. The balance for Fiscal Year 2013-2014 was $2,299,944.67.[22]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rule-making authority to DACS to implement and administer the program, including rules relating to the forms required to claim a rebate under the program, the required documentation and basis for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants. The rules "may" be adopted by December 31, 2015. Despite the permissive rule-making authority, it is clear that DACS is being *directed* to adopt rules to implement and administer the program. (See lines 83-97 of the bill.)

C. DRAFTING ISSUES OR OTHER COMMENTS:

See concerns noted above under *Rule-Making Authority*.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Business & Professions Subcommittee considered and adopted a strike-all amendment, and two amendments to the strike-all amendment, and reported the bill favorably as a committee substitute. The committee substitute, as amended, differs from the filed bill by:

- Expanding the purpose of the bill to include encouraging the use of a domestic fuel source and encouraging heavy transportation industry investments that contribute to the economic growth of the state;
- Expanding program eligibility to include high-horsepower engines that are converted from using heavy fuel oil to being powered by natural gas;

[22] Florida Department of Agriculture and Consumer Services, Office of Energy, http://www.freshfromflorida.com/Divisions-Offices/Energy/Natural-Gas-Fuel-Fleet-Vehicle-Rebate (last visited Apr. 11, 2015).

- Specifying that eligible ships must be waterborne ships that are built and documented in the United States with a coastwise endorsement under the 46 U.S.C. s. 55102 and that are used to provide regular transportation of merchandise between one or more ports in Florida and other domestic ports;
- Changing the earliest date that a vehicle must be placed into service from January 1, 2015, to July 1, 2015;
- Changing the rule-adoption date for DACS from January 1, 2016, to December 31, 2015, and making adoption of the rules by DACS permissive, i.e., "shall" to "may;"
- Changing the date of DACS' annual assessment deadline from October 1st to December 1st.
- Removing the OPPAGA report requirement; and
- Providing for annual appropriations of $10 million from the General Revenue Fund to DACS, beginning in FY 2015-2016 and continuing through FY 2019-2020.

On April 7, 2015, the Agriculture & Natural Resources Appropriations Subcommittee adopted one amendment. The amendment removes the $10 million appropriation and appropriates unobligated funds on June 30 each fiscal year from the Natural Gas Fuel Fleet Vehicle Rebate Program to the Heavy Transportation Industry Natural Gas Rebate Program for the subsequent fiscal year.

The bill was reported favorably as a committee substitute.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to a natural gas rebate program; creating s. 377.811, F.S.; creating the heavy transportation industry natural gas rebate program within the Department of Agriculture and Consumer Services; defining terms; providing powers and duties of the department with respect to the program; providing rebate eligibility requirements; providing limits on rebate awards; providing for an application process; authorizing the department to adopt rules; requiring the department to publish on its website the availability of rebate funds; requiring the department to submit an annual assessment to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability by a specified date; providing an appropriation; providing an effective date.

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

Section 1. Section 377.811, Florida Statutes, is created to read:

377.811 Heavy transportation industry natural gas rebate program.—

(1) CREATION AND PURPOSE OF PROGRAM.—There is created within the Department of Agriculture and Consumer Services a

heavy transportation industry natural gas rebate program. The purpose of the program is to help reduce transportation costs in the state, encourage the use of a domestic fuel source, and encourage heavy transportation industry investments that contribute to the economic growth of the state.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Conversion costs" means the costs associated with retrofitting a diesel-powered, gasoline-powered, or heavy-fuel-oil-powered locomotive, waterborne ship, or high-horsepower engine to a natural-gas-fuel-powered eligible vehicle or vessel.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Eligible costs" means the conversion costs or the incremental costs incurred by an applicant in connection with an investment in the conversion of, purchase of, or lease lasting at least 10 years of, a natural-gas-fuel-powered eligible vehicle or vessel. The term does not include costs for project development, fueling stations, or other fueling infrastructure.

(d) "Eligible vehicle or vessel" means a locomotive, waterborne ship, or high-horsepower engine used for transportation purposes, registered or licensed in the state, and used for commercial business or governmental purposes within the state. An eligible vehicle must be newly constructed or repowered and placed into service on or after July 1, 2015. A waterborne ship must be built and documented in the United States with a coastwise endorsement under 46 U.S.C. s. 55102 and

be used to provide regular transportation of merchandise between one or more ports in the state and other domestic ports.

(e) "High-horsepower engine" means an engine that provides more than 1,000 horsepower and is used for nonhighway transportation purposes.

(f) "Incremental costs" means the excess costs associated with the purchase or lease of a natural-gas-fuel-powered eligible vehicle or vessel as compared to an equivalent diesel-powered, gasoline-powered, or heavy-fuel-oil-powered eligible vehicle or vessel.

(g) "Natural gas fuel" means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in an eligible vehicle or vessel. The term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. The term does not include natural gas or liquefied petroleum placed in a separate tank for cooking, heating, water heating, or electric generation.

(3) HEAVY TRANSPORTATION INDUSTRY NATURAL GAS REBATE.—The department shall award rebates for eligible costs. A rebate may not exceed 50 percent of the eligible costs of a natural gas eligible vehicle or vessel with a dedicated or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2015. An applicant is eligible to receive a maximum rebate of $500,000 per eligible vehicle or vessel up to a total of $1

million per fiscal year. All eligible vehicles or vessels must comply with applicable United States Environmental Protection Agency emission standards.

(4) APPLICATION PROCESS.—

(a) An applicant seeking to obtain a rebate shall submit an application to the department by a specified date each year as established by department rule. The application shall require a complete description of all eligible costs, proof of purchase or lease of the eligible vehicle or vessel for which the applicant is seeking a rebate, a copy of the vehicle or vessel registration certificate or equivalent documentation, a description of the total rebate sought by the applicant, and any other information deemed necessary by the department. The application form adopted by department rule must include an affidavit from the applicant certifying that all information contained in the application is true and correct.

(b) The department shall determine the rebate eligibility of each applicant in accordance with the requirements of this section and department rule. The total amount of rebates allocated to certified applicants in each fiscal year may not exceed the amount appropriated for the program in the fiscal year. Rebates shall be allocated to eligible applicants on a first-come, first-served basis, determined by the date and time when the application is received, until all appropriated funds for the fiscal year are expended or the program ends, whichever occurs first. Incomplete applications submitted to the

department may not be accepted and do not secure a place in the first-come, first-served application process.

(5) RULES.—The department may adopt rules to implement and administer this section by December 31, 2015, including rules relating to the forms required to claim a rebate under this section, the required documentation and basis for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants.

(6) PUBLICATION.—The department shall determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year.

(7) ANNUAL ASSESSMENT.—By December 1, 2016, and each year thereafter that the program is funded, the department shall provide an annual assessment of the use of the rebate program during the previous fiscal year to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability. The assessment must include, at a minimum, the following information:

(a) The name of each applicant awarded a rebate under this section;

(b) The amount of the rebates awarded to each applicant;

(c) The type and description of each eligible vehicle or vessel for which each applicant applied for a rebate; and

(d) The aggregate amount of funding awarded for all

applicants claiming rebates under this section.

Section 2. Notwithstanding s. 216.301, Florida Statutes, the unobligated balance of funds in the General Revenue Fund appropriated to the Department of Agriculture and Consumer Services for the natural gas fuel fleet vehicle rebate program shall not revert on June 30 each fiscal year and is appropriated to the Department of Agriculture and Consumer Services for the subsequent fiscal year to implement the heavy transportation industry natural gas rebate program under s. 377.811, Florida Statutes.

Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1219 Public Food Service Establishments
SPONSOR(S): Business & Professions Subcommittee; Raulerson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Butler	Luczynski
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee		Butler BSB	Hamon K.W.H.

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) of the Department of Business and Professional Regulation (Department) licenses and inspects public food service establishments, which are defined as a place where food is prepared, served, or sold for consumption by the general public.

An eating place that is excluded from the definition of "public food service establishment" is removed from the regulatory oversight of the Division. The Division will not be able to charge a license fee, conduct inspections, require compliance with health, safety, welfare and sanitary requirements, or pursue administrative remedies or fines against an excluded eating place.

Current law excludes from the definition of "public food service establishment" any place maintained and operated by a public or private school, college, university, church or a religious, nonprofit fraternal or nonprofit civic organization temporarily for the use of members and associates, or temporarily to serve such events as fairs, carnivals, or athletic contests.

The bill adds "food contests" to the list of temporary events that are excluded from the definition of "public food service establishment." The bill amends s. 509.013, F.S., to provide that the Division may request documentation from individuals claiming an exemption from the definition of public food service establishment. A new exemption is created for:

- A temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts three or fewer days, if the individual or entity:
  - Guarantees a percentage of the profit generated at the event will be provided to the nonprofit host; and,
  - Does not generate more than $4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.

The bill amends s. 509.032, F.S., to require sponsors of temporary food services events to collect and submit certain contact information to the Division individuals or entities that operate an exempted eating place at the sponsor's event.

The bill is expected to have a negative fiscal impact on state funds by reducing revenues to the Hotels and Restaurants Trust Fund up to $228,410 annually. However, the Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 1219) will maintain a positive surplus cash balance of: $14.1 million in FY 2015-16, $17.4 in FY 2016-17, and $20.8 in FY 2017-18.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Food Service Establishments

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (Department) is the state agency charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.

The Division licenses and inspects public food service establishments, defined by s. 509.013(5)(a), F.S., to mean:

> any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

A "temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.[1]

At the end of fiscal year 2013-2014, there were 87,083 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.[2] The number of temporary event license applications processed during the last three fiscal years:

Fiscal Year	Temporary Event License Applications[3]
2013-14	7,718
2012-13	7,292
2011-12	7,125

During the last three fiscal years, one confirmed foodborne illness outbreak occurred in 2013 which sickened eight individuals.[4]

Exclusions from the Definition of Public Food Service Establishments

The definition of "public food service establishment" in s. 509.013(5)(b), F.S., excludes certain places, including:

- Any place maintained and operated by a public or private school, college, or university:
  - For the use of students and faculty; or
  - Temporarily to serve such events as fairs, carnivals, and athletic contests.

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[1] s. 509.13(8), F.S.

[2] Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Report, Fiscal Year 2013-2014*, *available at* http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr_annual_reports.html.

[3] Department of Business and Professional Regulation, email to staff of the Government Operations Appropriations Subcommittee, March 31, 2015.

[4] Department of Business and Professional Regulation, email to staff of the Government Operations Appropriations Subcommittee, March 31, 2015.

- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
  - For the use of members and associates; or
  - Temporarily to serve such events as fairs, carnivals, or athletic contests.

The Division broadly applies "members and associates" when determining licensure requirements.

The Division does not license or inspect temporary food service events when the food is prepared and served by an excluded entity. In Fiscal Year 2013-14, the Division licensed and inspected 7,718 public food service establishments and food vendors at temporary food service events. The Division collected an estimated $626,546 in temporary event license fees in Fiscal Year 2013-14.

Sponsors of Temporary Food Service Events

Pursuant to s. 509.032(3)(c), F.S., sponsors of temporary food service events are required at least three days before the event to provide the Division with event details, including the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee.

The Division uses this information to prepare and send inspectors to efficiently inspect each temporary food service establishment before the event begins or soon after the event begins. Generally the Division sends enough inspectors to inspect every temporary food service establishment within an hour of the inspectors arriving.

Notification to the Division may be completed orally, by telephone, in person, or in writing and this notification process may not be used to circumvent the license requirements of this ch. 509, F.S.

Effect of the Bill

The bill excludes temporary food contests from the definition of "public food service establishment" if conducted at any place maintained and operated by a public or private school, college, university, church, or a religious, nonprofit fraternal, or nonprofit civic organization.

The bill amends s. 509.013(5)(b)3., F.S., to provide that the Division may request documentation from individuals claiming an exemption from the definition of public food service establishment. A new exemption is created for:

- A temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts three or fewer days, if the individual or entity:
  - Guarantees that a percentage of the profit generated at the event will be provided to the nonprofit host; and
  - Does not generate more than $4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.

The bill does not provide a minimum percentage of profit that an individual or entity must guarantee to the nonprofit host to be excluded from the definition of "public food service establishment." Therefore, this exclusion could be applied to any food vendor at an event hosted by a nonprofit organization that guarantees any percentage of profit to the host. The Division estimates a loss of up to 100 percent of temporary event permit fee revenue for events that last less than three days.[5]

[5] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 1390, p. 2 (Mar. 16, 2015) (This analysis is to a previous version of SB 1390 that was identical to HB 1219, but has since been amended).

The bill provides the Division with the authority to request documentation of the annual revenue generated from eating places during the previous calendar year from an individual or entity that claims an exemption.

An eating place that is excluded from the definition of "public food service establishment," is removed from the regulatory oversight of the Division. The Division will not be able to charge a permit fee, conduct inspections, require compliance with health, safety, welfare and sanitary requirements, or pursue administrative remedies or fines against an excluded eating place.

A sponsor of a temporary food service event is required to submit additional information to the Division related to individuals or entities claiming an exemption at one of their events, specifically, a complete list of names, addresses, phone numbers, and the type of exemption that is being claimed by each individual or entity.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1 amends s. 509.013, F.S., revising the definition of the term "public food service establishment" to exclude certain events and locations provide the Division with the authority to request documentation of individuals claiming an exemption.

Section 2 amends s. 509.032, F.S., to require a sponsor of a temporary food service event to submit additional information to the Division related to individuals or entities claiming an exemption.

Section 3 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The loss of license fees could decrease revenues to the Hotels and Restaurants Trust Fund by up to $228,410 annually.[6] This reduction estimate considers the worst case scenario of a 100% reduction in licensing revenue from temporary food service establishment permits for events that last three days or fewer. However, the Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 1219) will maintain a positive cash balance of: $14.1 million in FY 2015-16, $17.4 in FY 2016-17, and $20.8 in FY 2017-18.[7]

   While the Division forecasts this reduction as the worst case scenario, the annual revenue cap of $4,000 on the exempted eating places should prevent a large amount of eating places from using the exemption, and subsequently, the actual fiscal impact is indeterminate and likely less than the worst case scenario presented here.

2. Expenditures:

   None.

[6] Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 1390, p. 4 (Mar. 16, 2015).
[7] Department of Business and Professional Regulation, Operating Account forecast of Hotels and Restaurants Trust Fund, emailed to staff of the Government Operations Appropriations Subcommittee, March 2, 2015.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill decreases permit fees and regulatory oversight for temporary food contests and for persons who operate eating places at events hosted by a church, religious organization, or nonprofit fraternal or civic organization.

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

On March 24, 2015, the Business & Professions Subcommittee considered and adopted one amendment. The amendment:

- Removes the exclusion from permitting or inspection for an eating place operating "for the benefit of" a nonprofit organization;
- Provides a new exclusion from licensing or inspection for a temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts three or fewer days, if the individual or entity:
  - Guarantees that a percentage of the profit generated at the event will be provided to the nonprofit host; and,
  - Does not generate more than $4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.
- Authorizes the Division to request documentation of eating places claiming an exemptions; and,
- Requires the sponsor of a temporary food service event to submit to the Division a list of all eating places being operated at their event and information for any individual or entity claiming an exemption.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to public food service establishments; amending s. 509.013, F.S.; revising the definition of the term "public food service establishment" to exclude certain events; amending s. 509.032, F.S.; providing additional requirements for temporary food service event sponsors; providing an effective date.

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

Section 1. Subsection (5) of section 509.013, Florida Statutes, is amended to read:

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

(5)(a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals,

food contests, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, or athletic contests.

3. Any temporary eating place maintained and operated by an individual or entity at a temporary event such as a fair, carnival, food contest, or athletic contest hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization that lasts 3 or fewer days, if the individual or entity:

a. Guarantees that a percentage of the profit generated at the event will be provided to the nonprofit host; and

b. Does not generate more than $4,000 in total annual revenue during the previous calendar year from all eating places and temporary events that it maintains and operates.

Upon request of the division, an individual or entity that claims an exclusion under this subparagraph must provide the division with documentation of such revenue generated during the previous calendar year, if any, from all eating places and temporary food service events that it maintains and operates.

4.~~3.~~ Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

5.~~4.~~ Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6.~~5.~~ Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7.~~6.~~ Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8.~~7.~~ Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9.~~8.~~ Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10.~~9.~~ Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11.~~10.~~ Any research and development test kitchen limited to the use of employees and which is not open to the general public.

Section 2. Paragraph (c) of subsection (3) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division, on a form adopted by rule of the division, at least ~~not less than~~ 3 days before the scheduled event of the type of food service proposed;~~,~~ the time and location of the event;~~,~~ a complete list of food service vendors participating in the event; a complete list of the names, addresses, telephone numbers, and types of exclusions claimed for any individuals or entities maintaining or operating eating places and claiming an exclusion under s. 509.013(5)(b);~~,~~ the number of individual food service facilities each vendor will operate at the event;~~,~~ and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors, including the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013(5)(b), a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events of 3 days or less in duration.

Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1247 Alcoholic Beverages
SPONSOR(S): Appropriations Committee, Avila and Berman
TIED BILLS: **IDEN./SIM. BILLS:** HB 823, CS/CS/SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 3 N	Butler	Luczynski
2) Appropriations Committee	25 Y, 1 N, As CS	McAuliffe	Leznoff
3) Regulatory Affairs Committee		Butler BSB	Hamon K. W. H.

SUMMARY ANALYSIS

Powdered alcohol is a product containing alcohol in a powdered form intended for human consumption, usually after being mixed with water to create an alcoholic drink.

The bill prohibits the sale of powdered alcohol or any alcoholic beverage that contains more than 76 percent alcohol by volume.

The bill provides that a person who violates this prohibition by selling powdered alcohol commits a misdemeanor of the first degree. The bill provides that a second violation within five years is a felony of the third degree. A person who violates the prohibition within five years of a first offense may also be treated as a habitual offender, which may result in a term of imprisonment not to exceed 10 years.

The bill provides that the prohibition on the sale of powdered alcohol or any alcoholic beverage that contains more than 76 percent alcohol by volume will be repealed on July 1, 2016, unless the Legislature reenacts the law.

The Criminal Justice Impact Conference (CJIC) met March 27, 2015 and determined this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the state's prison bed population by less than 10 inmates annually.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[1]

The term "alcoholic beverages" is defined by s. 561.01(4)(a), F.S., to mean "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume" and that the percentage of alcohol by volume is determined by comparing the volume of ethyl alcohol with all other ingredients in the beverage.

The terms "intoxicating beverage" and "intoxicating liquor" are defined by s. 561.01(5), F.S., to "mean only those alcoholic beverages containing more than 4.007 percent of alcohol by volume."

Liquor and distilled spirits are regulated specifically by ch. 565, F.S. The terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" by s. 565.01, F.S., to mean:

> that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Powdered Alcohol

Powdered alcohol is a product which, when combined with a liquid, produces an alcoholic beverage. The Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury have approved labels for the sale of the powdered alcohol product Palcohol on March 10, 2015.[2] The manufacturer of Palcohol has indicated that the alcohol produced from a single product is equivalent to the amount of alcohol in a mixed drink.[3] The manufacturer of this product does not indicate the actual percentage by volume of alcohol in the six ounces of liquid that are mixed with the powdered alcohol.

It is not clear whether powdered alcohol may be considered an alcoholic beverage under the Beverage Law. According to the Department, while there is no regulation of "distilled spirits in powdered form"[4] the definition of liquor in s. 565.01, F.S., would include powdered distilled spirits.[5]

The states of Alaska, Louisiana, South Carolina, Utah, Vermont, and Virginia have banned the sale of powdered alcohol.[6] The states of Delaware and Michigan define powdered alcohol as an alcoholic beverage.[7]

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[1] s. 561.02, F.S.
[2] Candice Choi, *Powdered Alcohol Gets Federal Agency's Approval*, ABC NEWS (Mar. 11, 2015), http://abcnews.go.com/Health/wireStory/powdered-alcohol-federal-agencys-approval-29552087; PALCOHOL, http://www.palcohol.com/home.html (last visited Mar. 19, 2015).
[3] *Id.*
[4] Florida Department of Business and Professional Regulation, Agency Analysis of 2015 House Bill 823/Senate Bill 998, p. 2 (Mar. 12, 2015).
[5] *Id.*
[6] *See* Heather Morton, *Powdered Alcohol 2015 Legislation*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Apr. 10, 2015), http://www.ncsl.org/research/financial-services-and-commerce/powdered-alcohol-2015-legislation.aspx.
[7] *Id.*

Effect of Proposed Changes

The bill creates s. 562.62(1), F.S., to prohibit a person from selling an alcoholic beverage that is intended for human consumption and sold in a powdered form, or that contains more than 76 percent alcohol by volume.

The bill creates s. 562.62(2), F.S., to provide that a person who violates the prohibition in subsection (1) by selling powdered alcohol commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.[8] The bill provides that a second violation within five years is a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s.775.084, F.S.[9]

The bill provides that the prohibition on the sale of powdered alcohol or any alcoholic beverage that contains more than 76 percent alcohol by volume will be repealed on July 1, 2016, unless the Legislature reenacts the law.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1 creates s. 562.62, F.S., prohibiting the sale of alcoholic beverages in powdered form and providing penalties.

Section 2 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference (CJIC) met March 27, 2015 and determined this bill will have an insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the state's prison bed population by less than 10 inmates annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[8] s. 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and s. 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

[9] s. 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years, s. 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000, s. 775.084, F.S., provides increased penalties for habitual offenders, and s. 775.084(4)(a), F.S., provides that a habitual felony offender may be sentenced, in the case of a felony of the third degree, for a term of years not exceeding 10.

Owners of powdered alcohol products may not sell them in Florida. These products have only recently been approved for sale, and the market for such products is unknown. This should not affect the current sales of any private business, but will prevent the sales of a business that may have otherwise been planning to sell powdered alcohol.

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

On April 7, 2015, the Appropriations Committee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment provides that the prohibition on the sale of powdered alcohol or any alcoholic beverage that contains more than 76 percent alcohol by volume will be repealed on July 1, 2016, unless the Legislature reenacts the law.

This analysis is drafted to the bill as passed by the Appropriations Committee.

A bill to be entitled

An act relating to alcoholic beverages; creating s. 562.62, F.S.; prohibiting the sale of alcoholic beverages in powdered form or containing more than a specified percentage of alcohol by volume; providing penalties; providing for future legislative review and repeal; providing an effective date.

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

Section 1. Section 562.62, Florida Statutes, is created to read:

562.62 Sale of powdered alcohol prohibited; maximum percentage of alcohol by volume; penalties.—

(1) A person may not sell an alcoholic beverage that:

(a) Is intended for human consumption and is in powdered form; or

(b) Contains more than 76 percent alcohol by volume.

(2) A person who violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates subsection (1) after having been previously convicted of such an offense within the past 5 years commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section is repealed July 1, 2016, unless reviewed and saved from repeal by the Legislature.

Section 2. This act shall take effect July 1, 2015.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1319 Financial Literacy
SPONSOR(S): Williams
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 0 N	Renner	Kiner
2) Regulatory Affairs Committee		Bauer	Hamon

SUMMARY ANALYSIS

The Credit Repair Organizations Act (CROA) was signed into law with the intent to prevent credit repair organizations from engaging in unfair business practices that result in financial hardships for consumers. Specifically, CROA prohibits untrue or misleading representations and requires certain affirmative disclosures in the offering or sale of "credit repair" services. CROA bars "credit repair organizations" from demanding advance payment, requires that "credit repair" contracts be in writing, and gives consumers certain contract cancellation rights.

While CROA is meant to prevent unfair and deceptive trade practices by credit repair organizations that undermine the accuracy and completeness of credit reports, the law could be construed to discourage national credit bureaus from providing credit education services to consumers.

The memorial urges the U.S. Congress to enact reforms to the Credit Repair Organization Act to ensure that nationwide credit reporting agencies create, promote, and maintain resources for consumers to access specific recommendations for improving their credit reports and credit scores.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

The memorial does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

Credit scores are used widely for assessing eligibility for mortgages, credit cards, student loans, personal loans, and other consumer credit. They are also used for other situations that a person may not think about, such as:

- Determining security deposits for renting a home;
- Setting up payment plans for various purchases; and
- Obtaining auto or home insurance.

Due to the increasing reliance on credit scores, financial literacy is essential in preparing individuals to make informed financial decisions.[1]

The 2014 Consumer Financial Literacy Survey showed the following statistics when it comes to budgeting, debt, and savings:[2]

- 61 percent of U.S. adults admit to not having a budget;
- 34 percent of U.S. adults indicated their household carries credit card debt from month-to-month;
- 32 percent of U.S. adults do not save any portion of their annual income for retirement; and
- 21 percent of U.S. adults are not at all sure about what types of information are included on a standard credit report.

Credit reports are used by financial institutions, insurance companies, employers, and other entities in making eligibility decisions affecting consumers. Information included in consumer reports generally may include consumers' credit history and payment patterns, as well as demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).

Credit reporting agencies (also known as credit bureaus) are entities that collect and disseminate information about consumers to be used for credit evaluation and other permissible purposes, such as employment or background checks for professional licenses. The three major credit reporting companies in the U.S. are Equifax, TransUnion, and Experian; depending on the credit reporting agency and scoring models, the measure of a consumer's risk of default varies, but generally considers a consumer's payment and credit history, types of credit, debt burden, and frequency of credit applications.[3]

Federal Regulation of Credit Reporting and Credit Scoring

In 1970, Congress enacted the federal Fair Credit Reporting Act (FCRA),[4] which regulates the collection, dissemination, and use of consumer credit information and is enforced by the Federal Trade Commission, and provides a private cause of action for consumers. The FCRA was enacted to (1)

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[1] Annamaria Lusardi, Dartmouth College, Harvard Business School, June 2008, "Financial Literacy: An Essential Tool for Informed Consumer Choice?" page 20; available at: http://www.dartmouth.edu/~alusardi/Papers/Lusardi_Informed_Consumer.pdf (last visited April 2, 2015).

[2] The National Foundation for Credit Counseling website on *Key Findings from the 2014 Consumer Financial Literacy Survey, available at http://www.c360m.com/online/2014_financial_literacy_infographic.html* (last visited April 2, 2015)

[3] USA.gov, *Credit Bureaus and Credit Scoring*, http://www.usa.gov/topics/money/credit/credit-reports/bureaus-scoring.shtml (lsat viewed Apr. 10, 2015).

[4] 15 U.S.C. §§ 1681 *et seq.*

prevent the misuse of sensitive consumer information by limiting recipients to those who have a legitimate need for it; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems. It requires that businesses providing consumer information to the credit reporting agencies ensure that the information be complete and accurate.

In 2003, Congress enacted the Fair and Accurate Credit Transactions Act (FACT) to improve the accuracy and transparency of the credit reporting system.[5] FACT amended the FCRA to require credit reporting agencies to provide consumers one free credit report every 12 months and enhanced consumer rights regarding identity theft detection and prevention and credit scoring. Additionally, FCRA provides civil penalties and remedies to contest inaccurate information, which is particularly important to detect identity theft or if an application for credit has been denied based on inaccurate information.

In 2010, the Wall Street Reform and Consumer Protection Act (commonly referred to as "Dodd-Frank") was signed into law.[6] It has widely been described as the most expansive financial regulatory legislation since the 1930s, and was formed with the intent "to focus directly on consumers, rather than on bank safety and soundness or on monetary policy."[7] Section 1100F Dodd-Frank amended the FCRA to require disclosure of credit scores and information relating to credit scores for both risk-based pricing and FCRA adverse action notices.

Federal and Florida Regulation of Credit Repair Organizations

The Consumer Credit Protection Act (CCPA),[8] enforced by the U.S. Department of Labor, protects employees from discharge by their employers because their wages have been garnished for any one debt, and limits the amount of an employee's earnings that may be garnished in any one week.[9] Generally, the CCPA safeguards consumers in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit; restricts the garnishment of wages; and creates the National Commission on Consumer Finance to study and make recommendations on the need for further regulation of the consumer finance industry.[10]

The Credit Repair Organizations Act (CROA),[11] enforced by the Federal Trade Commission, amends title IV of the CCPA. The intent of CROA is to prevent credit repair organizations from engaging in unfair business practices that result in financial hardships for consumers. CROA defines a credit repair organization broadly as any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that they will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of:

- Improving any consumer's credit record, credit history, or credit ratings; or
- Providing advice or assistance to any consumer with regard to any activity or service above.[12]

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[5] Pub. Law 108-159, 108th Congress (2003).
[6] Pub.L. 111-203, 111th Congress (2010).
[7] CONSUMER FINANCIAL PROTECTION BUREAU, *Creating the Consumer Bureau*, at http://www.consumerfinance.gov/the-bureau/creatingthebureau/ (last viewed Mar. 22, 2015).
[8] 15 U.S.C., § 1601 *et seq.*
[9] The U.S. Department of Labor website on The Consumer Credit Protection Act, available at: http://www.dol.gov/compliance/laws/comp-ccpa.htm#overview (last visited April 2, 2015).
[10] Pub. Law 90-321, 90th Congress (1968).
[11] 15 U.S.C., §1679 *et seq.*
[12] Internal Revenue Service publication on *Credit Counseling Organizations, 2004. Available at http://webcache.googleusercontent.com/search?q=cache:KhkmTp5-7tQJ:www.irs.gov/pub/irs-tege/eotopica04.pdf+&cd=1&hl=en&ct=clnk&gl=us* (last visited April 2, 2015)

CROA excludes from the definition of a credit repair organization any nonprofit organization which is exempt from taxation under IRC 501(c)(3).[13] CROA also excludes from the definition any depository institution,[14] Federal or State credit union,[15] or any affiliate or subsidiary of a depository or credit union.

Specifically, CROA prohibits credit repair organizations from making untrue or misleading representations and requires them to provide certain affirmative disclosures in the offering or sale of "credit repair" services.[16] In furtherance of its duties, CROA:

- Bars "credit repair" companies from demanding advance payment;
- Requires that "credit repair" contracts be in writing; and
- Gives consumers certain contract cancellation rights and civil remedies.[17]

Florida Credit Service Organizations Law

Part III of ch. 817, F.S., governs "credit service organizations" and contains similar provisions to the federal CROA. Like credit repair organizations under CROA, credit service organizations provide, in return for the payment of money or other valuable consideration, services, advice, and assistance to improve a buyer's credit record, history, or rating.[18] Credit service organizations also may assist buyers with obtaining an extension of credit. Florida law excludes more persons from the definition of credit service organization than CROA, including credit reporting agencies. Like CROA, part III of ch. 817, F.S., also prohibits advance fees and false or misleading representations, requires credit service organizations to comply with certain written disclosure and contractual requirements, and provides civil remedies.[19] CROA preempts state law only to the extent state law is inconsistent with CROA.[20]

Congressional Credit Repair Organization Legislation

While CROA is meant to prevent unfair and deceptive trade practices by credit repair organizations that undermine the accuracy and completeness of credit reports, the law could be construed to discourage national credit bureaus from providing credit education services to consumers. One recent federal appellate decision found that an online company is a "credit repair organization" for purposes of the CROA, because it represented itself as selling or providing a service, advice, or assistance in connection with an individual's credit, which the court held went beyond merely providing credit scores, reports, and consumer credit information.[21]

The Facilitating Access to Credit Act of 2015[22] was introduced in January 2015. The Act amends CROA to exempt from its coverage any consumer reporting agency (or affiliate subsidiary) described under the Fair Credit Reporting Act as:[23]

- One that compiles and maintains files on consumers on a nationwide basis; or

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[13] To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may be given to a private shareholder or individual. Additionally, it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates. *See* http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501(c)(3)-Organizations (last visited April 2, 2015)

[14] 12 U.S. Code § 1813 defines a depository as any bank or savings association.

[15] 12 U.S. Code § 1752 defines a Federal credit union as a cooperative association for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

[16] Federal Trade Commission website on Credit Repair Organization Act, available at https://www.ftc.gov/enforcement/statutes/credit-repair-organizations-act (last visited April 2, 2015)

[17] *Id.*

[18] s. 817.7001(2), F.S.

[19] ss. 817.7005, 807.702, 807.704, and 807.706, F.S.

[20] 15 U.S.C. 1679j.

[21] *Stout v. FreeScore, LLC,* 743 F.3d 680 (9th Cir. 2014)

[22] H.R. 347, 114th Congress

[23] Congress.gov H.R. 347 summary, *available at* https://www.congress.gov/bill/114th-congress/house-bill/347 (last visited April 2, 2015)

- Any person, which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers in order to furnish consumer reports to third parties, if the person is subject to supervision and examination by the Consumer Financial Protection Bureau.

Furthermore, the bill preempts state law and regulations concerning a credit repair organization to the extent they would apply to consumer reporting agencies subject to this Act and directs the Federal Trade Commission to study whether, in addition to these persons, any other person should be exempt from CROA.[24]

The bill has been referred to the House Financial Services Committee; however, it has not been heard in the committee.

Effect of Proposed Changes

The memorial urges the U.S. Congress to enact reforms to the Credit Repair Organization Act to ensure that nationwide credit reporting agencies create, promote, and maintain resources for consumers to access specific recommendations for improving their credit reports and credit scores.

Furthermore, copies of the memorial will be sent to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and to each member of the Florida delegation to the U.S. Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

B. SECTION DIRECTORY:

Not applicable.

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.

[24] *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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

House Memorial

A memorial to the Congress of the United States, urging Congress to support and encourage greater financial literacy and to reform the Credit Repair Organizations Act to grant consumers greater access to credit report and credit score education resources.

WHEREAS, financial literacy is essential in preparing individuals to make informed financial choices and take control of their financial circumstances, to improve their quality of life, and to plan for their financial future, and

WHEREAS, the 2014 Consumer Financial Literacy Survey suggests that many Americans continue to struggle with their finances, and one in five adults is unsure about the type of information that is included on a credit report and that many adults have misconceptions about, or are unaware of, the specific type of information that a credit report contains, and

WHEREAS, although Florida is a leader in financial literacy initiatives and the first state in the nation to adopt the Council for Economic Education's National Standards for Financial Literacy, which helps young adults understand how to make informed financial decisions, the complexity of credit scoring requires better education and tools, and

WHEREAS, credit scores are widely used by financial institutions to assess eligibility for mortgages, credit cards, student loans, personal loans, and other consumer credit, and

WHEREAS, the United States Congress has repeatedly stressed the importance of increasing transparency of credit reports and credit scores through amendments to the Fair Credit Reporting Act, the Fair and Accurate Credit Transactions Act of 2003, the Credit Card Accountability Responsibility and Disclosure Act of 2009, and the Wall Street Reform and Consumer Protection Act of 2010, and

WHEREAS, lenders disclose an estimated 120 million credit scores annually when consumers apply for loans, and many lenders provide customers with their credit scores on the monthly statements, and

WHEREAS, an increase in the availability of and access to credit scores generates more consumer questions for lenders and credit reporting agencies, and

WHEREAS, although the Credit Repair Organizations Act is an important consumer protection law designed to prevent unfair and deceptive practices by credit repair organizations that undermine the accuracy and completeness of credit reports, the law has been broadly applied by courts in ways that the United States Congress never intended, limiting the development and delivery of innovative credit education products and services, and

WHEREAS, many consumers who contact credit reporting agencies inquiring about their credit scores and credit reports and seeking specific recommendations for improving such scores and reports find that these agencies are limited by the Credit

Repair Organizations Act from providing individualized assistance, and

WHEREAS, consumers should be able to obtain individualized assistance from supervised and regulated sources to learn specific actions they can take to improve their credit reports and credit scores, and

WHEREAS, the State of Florida and the United States Congress should use their powers to ensure that consumers have timely access to, and that organizations are offered incentives to invest in, financial education, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Congress of the United States is urged to enact reforms to the Credit Repair Organizations Act to ensure that nationwide credit reporting agencies create, promote, and maintain resources for consumers to access specific recommendations for improving their credit reports and credit scores.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/CS/HB 1325 Gainesville Regional Utilities Commission, Alachua County
SPONSOR(S): Energy & Utilities Subcommittee; Local Government Affairs Subcommittee; and Perry
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N, As CS	Zaborske	Miller
2) Energy & Utilities Subcommittee	8 Y, 3 N, As CS	Keating	Keating
3) Regulatory Affairs Committee		Keating CK	Hamon K.W.H.

SUMMARY ANALYSIS

CS/HB 1325 is a local bill amending the charter for the City of Gainesville to establish the Gainesville Regional Utilities Commission (GRUC). Currently, Gainesville Regional Utilities (GRU) is a municipal utility under the authority of the Gainesville City Commission. GRU provides electric, natural gas, water, wastewater, and telecommunications services. The bill transfers authority over the GRU system from the City Commission to GRUC, a board to be appointed by the City Commission. The bill details GRUC's governance and leadership structure, as well as duties and powers. In summary of its main components, the bill:

- Repeals Section 3.06 of the City's current charter relating to the general manager for utilities.
- Establishes GRUC as a regional independent utilities commission.
- Provides that GRUC will be a municipally-owned, cost-based, not-for-profit, and political subdivision of the state with no ad valorem taxing authority.
- Provides that GRUC will consist of 5 members appointed by the City Commission
- Allows for up to 3 nonvoting members to be appointed by GRUC.
- Sets forth qualification requirements for GRUC members.
- Provides that the monthly salary for voting members of GRUC will be 60% the salary of a City Commissioner, adjusted by the consumer price index.
- Staggers the term time period for initial GRUC members and provides for 4-year terms thereafter.
- Provides for removal of GRUC for cause, and sets forth grounds for removal from office.
- Gives GRUC the power of eminent domain.
- Gives GRUC exclusive power and authority to bill and collect fees or charges for all utilities.
- Indemnifies GRUC members and executives.
- Provides that the amount transferred by GRUC to the City's General Revenue Fund cannot be more than 9% or less than 7% of gross revenues, after first paying other expenses.
- Provides that a Chief Executive Officer/General Manager (CEO/GM) will direct and administer utilities functions under GRUC's policies and authority.

The Economic Impact Statement (EIS) projects $160,000 in costs to pay 5 new commissioners, plus their travel and expenses. It does not identify any other costs associated with the creation of, transfer of powers and responsibilities to, or staffing and operation of the new commission.

The bill takes effect upon its approval by a majority vote of the qualified electors of the City of Gainesville voting in a referendum to be held in conjunction with the next Presidential Preference Primary election in Alachua County.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Alachua County - City of Gainesville

Alachua County has an estimated population of approximately 253,000 residents.[1] The largest city in the County, the City of Gainesville,[2] has an estimated population of approximately 127,000 residents.[3] The City of Gainesville has a seven-member City Commission, comprised of four commissioners elected from single member districts, two elected at-large, and one member who is elected as mayor.[4]

Municipal Utilities

Pursuant to Art. VIII, s. 2(b), of the State Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. The legislative body of each municipality has the power to enact legislation on any subject upon which the state Legislature may act, with certain exceptions.[5]

Under their home rule power and as otherwise provided or limited by law or agreement, municipalities may provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even other municipalities. Current law provides that municipalities or an agency of a municipality may be a "joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction, and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person."[6] Additionally, municipalities are expressly authorized by general law to provide water and sewer utility services.[7] With respect to public works projects, including water and sewer utility services,[8] municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare" to accomplish the purposes of ch. 180, F.S.[9] Current law requires

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[1] 2013 Alachua County estimated population from the United States Census Bureau, State & County QuickFacts, available at http://quickfacts.census.gov/qfd/states/12/12001.html (last visited 03/22/2015).
[2] *Id.*
[3] 2013 City of Gainesville estimated population from the United States Census Bureau, State & County QuickFacts, available at http://quickfacts.census.gov/qfd/states/12/1225175.html (last visited 03/22/2015).
[4] Gainesville's City of Commission, available at http://www.cityofgainesville.org/CityCommission.aspx (last visited 03/22/2015).
[5] Pursuant to s. 166.021(3)(a)-(d), F.S., a municipality may not enact legislation on the following: the subjects of annexation, merger, and exercise of extraterritorial power, which require general law or special law; any subject expressly prohibited by the constitution; any subject expressly preempted to state or county government by the constitution or by general law; and any subject preempted to a county pursuant to a county charter adopted under the authority of the State constitution.
[6] Art. VII, s. 10(d), Fla. Const. *See* ss. 361.10-361.18, F.S.
[7] Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes).
[8] S. 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.
[9] S. 180.02(2), F.S. However, a municipality may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions. S. 180.19, F.S.

municipalities providing telecommunication services to abide by certain requirements.[10] Municipal utilities are subject to limited oversight by the Public Service Commission (PSC).[11] PSC regulation of municipal electric utilities is limited to oversight of safety, reliability, territorial, and rate structure issues.[12] PSC regulation of municipal natural gas utilities is limited to territorial issues.[13] Municipal utilities that provide water and/or wastewater service are exempt from PSC regulation.[14]

Gainesville Regional Utilities (GRU)

Gainesville Regional Utilities (GRU) was established in 1912 as a city-run electric utility.[15] It is the fifth largest municipal electric utility in Florida, serving approximately 93,000 retail and wholesale customers in Gainesville and surrounding areas.[16] It now offers electric, natural gas, water, wastewater, and telecommunications services. An audit for 2012-2013 states that GRU in September 2013 had $1.2 billion in capital assets, and a $77.2 million and $95.2 million budget in 2014 and 2013, respectively.[17] An audit for 2013-2014 states that GRU's capital assets as of September 2014 increased to $2.2 billion, noting that the 82% increase in net capital assets was primarily due to a capital lease related to a biomass plant.[18] According to the audit, GRU's net financial position decreased by $1.7 million and $14.1 million in 2014 and 2013, respectively, but increased by $16.8 million in 2012.[19] There are 34 municipal electric utilities in Florida.[20] GRU's residential electric utility rates in January 2015 were above the average for Florida municipal utilities, and the second highest municipal rates among Florida municipal utilities.[21]

The City of Gainesville's charter provides that the City Commission appoints an at-will general manager for utilities who is responsible to the City Commission and who is responsible for the efficient

[10] *See* s. 166.047, F.S. (setting forth certain requirements for municipal telecommunication services); s. 350.81, F.S. (providing conditions under which local governments may provide telecommunications services).
[11] *See* s. 366.011(1), F.S. (exemption for municipal utilities); s. 367.022(2), F.S. (exempting governmental entities that provide water and/or wastewater service from PSC regulation).
[12] Ss. 366.04(2), (5), and (6), F.S. According to the PSC's most recent "Facts and Figures of the Florida Utility Industry" (March 2014), there are 35 municipal electric utilities in Florida that are subject to this limited jurisdiction. Available at http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf (last visited 03/22/2015).
[13] S. 366.04(3), F.S. According to the PSC's most recent "Facts and Figures of the Florida Utility Industry" (March 2014), there are 27 municipal electric utilities and 4 special gas districts in Florida that are subject to this limited jurisdiction. Available at http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf (last visited 03/22/2015).
[14] S. 367.022(2), F.S.
[15] Gainesville Area Chamber of Commerce, *A Gainesville Solution: Energy Competitiveness Report* (November 2013), at p. 41, available at http://www.gainesvillechamber.com/wp-content/uploads/2013/11/Chamber-Energy-Competitiveness-Report-Nov-2013.pdf (last visited 03/13/2015).
[16] About GRU, available at https://www.gru.com/AboutGRU.aspx (last visited 03/22/2015).
[17] Gainesville Regional Utilities, September 30, 2013 and 2012, Report of Independent Certified Public Accountant, Ernst & Young LLP, available at https://www.gru.com/Portals/0/Legacy/Pdf/AboutGRU/2012-2013AuditedFinancialStatement.pdf (last visited 03/22/2015).
[18] Gainesville Regional Utilities, September 30, 2014 and 2013, Financial Statement and Independent Auditors' Report, Purvis Gray & Company, available at https://gainesville.legistar.com/LegislationDetail.aspx?ID=2211585&GUID=55D68315-98BC-43E9-AB20-F8988B4C98E3&Options=&Search (last visited 03/22/2015), at p. 8.
[19] *Id.* at p. 5.
[20] Florida Municipal Electric Association, Florida Municipal Utility Map, available at http://publicpower.com/florida-municipal-utility-map/ (last visited 03/22/2015).
[21] Florida Municipal Electric Association, Florida Electric Bill Comparisons, available at http://publicpower.com/electric-rate-comparisons/ (last visited 03/22/2015).

administration of the utility system.[22] The Charter also sets forth the GM's general powers and duties, which provide that the GM is:[23]

- Responsible for and has exclusive management jurisdiction and control over operating and financial affairs of the utility system including, but not limited to, the planning, development, production, purchase, sale, exchange, interchange, transmission and distribution of all electricity; the planning, development, purchase, sale, exchange, interchange, transmission and distribution of all natural gas; the planning, development, supply, treatment, transmission, distribution and sale of all potable water; and the planning, development, collection, treatment, disposal and billing of all wastewater now or hereafter provided by the city;
- Required to submit to the City Commission for its consideration a yearly budget for the operation of the utility system;
- The purchasing agent for all equipment, materials, supplies and services necessary for operating and maintaining the utility system subject to policies promulgated by the commission;
- Required to propose ordinances to designate the job titles of subordinates that are to be considered directors of department;
- Required to appoint and, except as otherwise provided in this charter, remove all directors of departments at will;
- Required to recommend to the City Commission all measures necessary and expedient for the proper governance and management of the utility system;
- Required to keep the City Commission fully advised as to the management, governance and needs of the utility system; and
- Required to perform all other duties prescribed by law, this charter, ordinance, or direction of the City Commission.

The Charter also prohibits the City from disposing of, or agreeing to dispose of, in whole or part, the City's electrical or water production or distribution facilities so as to materially reduce the City's capacity to produce or distribute electrical energy or water, except by ordinance with the prior approval of a majority vote of the qualified electors of the city.[24]

The Code of Ordinances for the City of Gainesville provides for an Energy Advisory Committee comprised of 9 members appointed by the City Commission.[25] The committee has the following duties, functions, powers, and responsibilities:

- Serve as a communications channel between the City Commission, utility staff, and the citizens of the city, in order to understand and solve the many complex problems relating to energy;
- Promote public access to information on the city facilities, services, policies, and programs concerning energy, and consider the future energy needs of the community with respect to the utilities as well as general government;
- Assist utility staff by suggesting and reviewing policies affecting programs and services that affect acquisition, delivery, or utilization of energy resources within the community; and
- Perform any other duties which may be within the purview of the committee which may be assigned by the City Commission.

There also is a Regional Utilities Committee, on which three City Commissioners currently sit.[26]

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[22] City of Gainesville Code of Ordinances, available at https://www.municode.com/library/fl/gainesville/codes/code_of_ordinances?nodeId=PTICHLA_ARTIICICO (last visited 03/22/2015), at part I, art. V, s.3.06(1).
[23] *Id.* at part I, art. III, s. 3.06(2)(a)-(h).
[24] *Id.* at part I, art. V, s. 5.04.
[25] *Id.* at part II, ch. 2, art. V, div. 7.

Chapter 27 of the Code of Ordinances for the City of Gainesville sets forth regulations pertaining to each municipal utility system.[27]

In November 2013, the Gainesville Area Chamber of Commerce and Council for Economic Outreach submitted a report to the City of Gainesville.[28] The study, conducted by a 12-member Energy Study Group, led by Representative N. David Flagg, who is a former Mayor of Gainesville, and Dr. David A. Denslow, Jr., a retired University of Florida economist.[29] According to the report, Gainesville is a unique city with about 58% of property off the tax rolls.[30] The City Commission has directly governed GRU for over 100 years.[31] According to the report, GRU's combined municipal utility system operation is composed of five Enterprise Funds (Electric System, Water System, Wastewater System, Gas System, and Telecommunications/GRUCom).[32]

The report provides four policy recommendations for the City of Gainesville "to help Gainesville remain a competitively advantaged community for sustainable economic development as it relates to overall energy costs."[33] The fourth recommendation provides that the method of governance be changed to an appointed utility authority.[34] The report notes that JEA (formerly known as Jacksonville Electric Authority), is the largest municipal utility in Florida.[35] It has a governance structure under which the board is appointed by the Mayor of Jacksonville, subject to confirmation by the Council.[36] The report also notes that the Orlando Utilities Commission board appoints its own members from a pool of candidates identified by a city nominating committee,[37] and that Lakeland Electric has a Commission/Customer Committee Hybrid.[38] The report states that the City of Tallahassee has a City Commission governance model.[39] According to the report, Florida cities with an appointed utility authority "are more competitive than Gainesville in commercial and industrial customer class electricity costs," noting that Jacksonville, Orlando, Kissimmee, Fort Pierce, and New Smyrna Beach each have

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[26] According the City of Gainesville's website, Commissioners Todd Chase, Lauren Poe, and Craig Carter are current members of the Regional Utilities Commission, available at http://www.cityofgainesville.org/CityCommission/CommissionerToddChase.aspx, http://www.cityofgainesville.org/CityCommission/CommissionerLaurenPoe.aspx, and http://www.cityofgainesville.org/CityCommission/CommissionerCraigCarter.aspx (last visited 03/22/2015).
[27] *Id.* at part II, ch. 27, art. I-VI.
[28] Gainesville Area Chamber of Commerce, *A Gainesville Solution: Energy Competitiveness Report* (November 2013), available at http://www.gainesvillechamber.com/wp-content/uploads/2013/11/Chamber-Energy-Competitiveness-Report-Nov-2013.pdf (last visited 03/22/2015).
[29] *Id.* at p. 7.
[30] *Id.*
[31] *Id.*
[32] The Florida Enterprise Zone Program, created by the Legislature in 1982, provides incentives, including state and local government investments and tax incentives, and local regulatory relief, to encourage businesses to invest and locate in designated zones (economically distressed areas) and residents to improve their property. The Florida Legislature's Office of Program Policy Analysis & Gov't Accountability, Research Memorandum: *Florida's Enterprise Zone Program* (January 5, 2015), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.fl-counties.com%2Fdocs%2Fdefault-source%2F2015-Advocacy%2Foppaga-2015-analysis-of-florida%2527s-enterprise-zones.pdf%3Fsfvrsn%3D0&ei=ca4FVcuqJ8jFggTLtoT4Cg&usg=AFQjCNFAzilMIew0z7CPbQfRKyt7aa5_3A&bvm=bv.88198703,d.eXY (last visited 03/15/2015), citing ss. 290.001-290.016, F.S. (authorizing the creation of enterprise zones and specifying the program's criteria and goals).
[33] *Id.* at 7.
[34] *Id.*
[35] *Id.* at 51.
[36] *Id.* at 50.
[37] *Id.* at 50.
[38] *Id.* at 50.
[39] *Id.* at 50.

an appointed utility authority and that "[c]ommercial and industrial class electricity costs in those cities are significantly lower than in Gainesville."[40]

Effect of Proposed Changes

Section 1

The bill repeals a current charter provision, Section 3.06 of Article III in Section 1 of Chapter 90-394, Laws of Florida, relating to the general manager for utilities. The bill renders that provision obsolete.

Section 2

The bill amends the charter for the City of Gainesville, adding Article VII to the charter,[41] establishing the "Gainesville Regional Utilities Commission." The following chart summarizes the provisions proposed in the bill to be added to the City of Gainesville's charter:

7.01 Establishment	
7.01(1)	• Creates a regional independent utilities commission • Names it "Gainesville Regional Utilities Commission" (GRUC) • GRUC consists of 5 voting members • Defines "utilities commission," "member," and "utilities"
7.01(2)	• Not-for profit enterprise • Municipal legal entity • Plenary authority • Governed by an independent governing commission • Consists of 5 appointed members • GRUC members appointed by the City Commission • Part of the government of the City of Gainesville • GRUC owned by the citizens of the City of Gainesville
7.01(3)	• Plenary authority for the express purpose of acquiring, constructing, operating, providing, financing, and having complete authority with respect to utilities
7.02 GRUC Voting members	
7.02(1)	• 5 voting members, appointed by simple majority vote of the City Commission, that meet the following qualifications: o Reside year-round within GRUC's electric service territory o GRUC customer o Possess, at a minimum, a 4-year baccalaureate degree from an accredited institution with a major area of study in public affairs, business, law, economics, accounting, engineering, finance, energy, or another field substantially related to GRUC's duties and functions or, alternatively, be a business owner or partner or officer in a business with over $5 million in annual sales o Not been convicted of a felony • Voting members appointed to staggered 4-year terms • Voting members must maintain qualifications • Power to make and adopt rules and regulations • Must be qualified electors of the City of Gainesville, except 1 must be a qualified elector from the unincorporated area of Alachua County, and the composition of the commission must be adjusted to reflect the ratio of electric meters serving customers in the unincorporated area to electric meters serving all customers
7.02(2)	• Voting members must remain qualified throughout term • Prohibits until January 1, 2020, any current or previous city or county employee or

[40] *Id.*
[41] Ch. 12760, Laws of Fla., 1927, as amended. *See* ch. 90-394, s. 1, Laws of Florida (charter).

	any elected or appointed city or county officer or official, who was an employee or elected or appointed officer or official after January 1, 2000, from being a voting member • Prohibits a voting member who is appointed for 2 full consecutive 4-year terms from succeeding self
7.03 Voting member terms	
7.03(1)	• Within 90 days after approval of the act by referendum initial members appointed • Initial member term starts on October 4, 2016 • Initial terms (1, 2, 3, 4, and 5 years) • 4-year terms after initial appointments
7.03(2)	• Expeditiously schedule appointment session and fill any voting member vacancy within 2 months after permanent vacancy if more than 3 months left in term
7.03(3)	• Voting member may be removed from office as provided by law upon conviction of malfeasance or misfeasance, upon conviction of a felony, for failure to maintain all qualifications, or for violation of this act or a "provision of stipulated governance policies as may be subsequently adopted and enforced" by GRUC
7.04 Utilities commission; initial meeting, organization, and oath	
7.04(1)	• Initial meeting day, time, and location • Meet at least once each month • Meet at office of GRUC or as otherwise determined • Meetings open to the public • Minutes kept at each meeting • Initial meeting and the first meeting after each annual appointment includes an organizational agenda item for: o Mayor to swear in new members o Election by voting members of chairperson, vice chairperson, and secretary/treasurer
7.04(2)	• Sets forth the oath
7.05 Member compensation	
	• Salary of 60% each month of the salary of a city commissioner, with adjustments • Expenses for carrying on and conducting business • No supplemental benefits
7.06 Appointment of chief executive officer/general manager	
7.06(1)	• Full and exclusive authority over the management, operation, and control over the city's utilities • Employ and discharge all employees only through the chief executive officer/general manager (CEO/GM)
7.06(2)	• Member cannot be the first CEO/GM
7.07 General provisions	
7.07(1)	• All business of GRUC overseen by members
7.07(2)	• GRUC operates as a municipally-owned, cost-based, not-for-profit, and political subdivision of the state • GRUC has no ad valorem taxing power
7.07(3)	• GRUC is comprised of voting and nonvoting members • Provides the CEO/GM shall be a nonvoting member of GRUC • Other nonvoting members may be staff executives and external individuals who reside in the electric service area; they may be removed by GRUC • Provides there can be no more than 3 nonvoting members • Nonvoting members can only be appointed for no more than 2 years, but may be reappointed for no more than 2 additional years • Nonvoting members receive no compensation, but can receive expenses
7.07(4)(a)-(e)	• GRUC, upon unanimous resolution after notice and an opportunity to respond, may request that the Governor: o Suspend or remove a voting member for malfeasance, misfeasance, neglect of

	duty, habitual drunkenness, incompetence, permanent inability to perform official duties, or failure to maintain qualifications. Felony conviction o Suspend a voting member who is arrested for a felony or misdemeanor related to official duties or who is indicted or informed against for a state or federal felony or misdemeanor o Remove a voting member who is convicted of a state or federal felony or misdemeanor • City Commission may make an appointment to fill a temporary vacancy due to suspension • If cleared of charges, the suspended voting member is reinstated • Member subject to suspension, discipline, or reinstatement may not participate in deliberations, debate, or vote
7.07(5)	• Private tangible and intangible property of member is not subject to the payments of GRUC debts
7.07(6)(a)-(e)	• Provides the right of indemnification for officers, executive, or members of GRUC if involved in utilities-related legal action, and sets forth specifics regarding these rights
7.07(7)	• The City Commission and the City must create conveyance instruments to effect the unrestricted transfer of governing authority over land, facilities, licenses, debt, funds, entitlement, or other utility activity • The City Commission and the City may not encumber such conveyance with conditions precedent or administrative requirements
7.07(8)	• A special meeting with the City Commission will be held when the chairperson calls for one or if the City Commission demands such a meeting in writing and delivers the demand to GRUC's secretary/treasurer
7.07(9)	• CEO/GM will provide an orientation and training program for new members • Staff management also will periodically provide materials or briefing sessions for members • Encourages member to attend sessions or program and review materials relating to their responsibilities of members of publicly owned utilities
7.08 Powers and duties	
7.08(1)	• For transition purposes, all previously applicable utilities-related ordinances, policies, rates, fees, rules, regulation, budgets, and other provisions under the City of Gainesville charter are considered adopted, reenacted, or assumed by GRUC
7.08(2)	• GRUC may exercise the power of eminent domain for specified purposes
7.08(3)	• GRUC has exclusive power and authority to bill and collects fees and charges for utilities and services • Sets forth how funds are collected and paid out: first, operating and maintenance expenses paid; second, reserves are funded; third, a payment is made to the general fund of the city not to exceed 9% or be less than 7% of gross revenues for GRUC; and, if there is a surplus it may be paid into the general fund[42]
7.08(4)	• GRUC must submit a monthly statement to the City providing specified information • Provides the fiscal year for GRUC begins October 1 and ends September 30 each year
7.08(5)	• GRUC will diligently enforce and collect all fees, rates, or other charges for the

[42] The General Fund Transfer (GFT) is an annual transfer GRU makes to the City of Gainesville's general government based on a pre-defined formula. Gainesville Area Chamber of Commerce, *A Gainesville Solution: Energy Competitiveness Report* (November 2013), at p. 45, available at http://www.gainesvillechamber.com/wp-content/uploads/2013/11/Chamber-Energy-Competitiveness-Report-Nov-2013.pdf (last visited 03/22/2015).
In 2014, the GRU transferred $38.1 million into the City's General Revenue Trust, *id.*, by moving the decision to determine that amount out of the exclusive hands of the City Commissioners and the current GM (who answers to the City Commissioners) could result in a reduction in the funds given to the utility (which gives these funds because it doesn't pay taxes or dividends), but that could be offset by a corresponding reduction in utility rates.

	services and facilities and take all aspects to enforce the collection
7.08(6)	• Provides that GRUC will ensure that no entity of the city, county, or state, or a county or city elected official, or an officer or director of the city or county or GRUC, or member, may dictate any employment for GRUC positions or interfere with the independence of GRUC officers, executives, or employees in the performance of their duties. • Provides that except for the purpose of an inquiry for information of public records, communications by the City Commission or the Alachua County Commission regarding GRUC members or business, must be through GRUC's secretary/treasurer • Members may not give an individual orders to or interfere with any direct or indirect subordinates of the CEO/GM
7.08(7)	• Provides that GRUC will ensure members are granted complete access to its management, records, documents, and transactions, subject to reasonable advance notice to the CEO/GM • GRUC and each committee will have access to advisors as they deem necessary • Inquiry and information requests the CEO/GM deems excessive or interfering with work may be presented to the chairperson or mediation before filing a formal interference complaint by the CEO/GM with GRUC
7.08(8)	• Provides that GRUC will ensure that it does not dispose of or agree to sell or convey its used and useful assets exceeding 5% of the individual utility's total assets unless approved by a majority vote of the City Commission
7.08(9)	• Provides that GRUC will ensure that the City will not grant any franchise for the furnishing of services which will compete with GRUC's utilities • Provides that the City or county will not levy any discriminatory fee upon GRUC or its utilities unless provided by general law
7.08(10)	• GRUC is prohibited from rendering or causing to be rendered any free utilities, or the like, from having preference rates for users within the same class • Provides that GRUC, City, and county all must use GRUC's utilities and the same rates, etc., applicable to other customers receiving like services under similar circumstances will be charged, such charges must be paid as they become due, and revenues received will be deposited and accounted for in the same manner as other revenues derived from such operation of the utilities
7.08(11)	• Requires GRUC to ensure that all existing City of Gainesville authority, laws, ordinances, resolutions, and administrative regulations, interpretations, franchises, and controls directly and indirectly affecting and controlling said utilities are conveyed to and exclusively vested within GRUC • Provides that all rights, claims, actions, orders, and legal or administrative proceedings involving GRUC immediately prior to the effective date of the act will continue, except as modified pursuant to GRUC's plenary powers granted by the act
7.08(12)	• Provides that GRUC will ensure there is an ethics policy and code of business conduct policy that is reviewed at least biennially • Requires members, officers, executives, management, and supervisory employees to acknowledge annually in writing their compliance with GRUC's Code of Ethics and Business Conduct; waiver of this requirement may only be granted by a unanimous vote of GRUC sitting as a full commission • A member of GRUC requesting the waiver may not participate in deliberations, debate, or voting on the request
7.08(13)	• GRUC will ensure that the rights or privileges of a person who was a city utility employee immediately before the effective date of the act is not affected or impaired

Section 3

The bill includes a severability clause to prevent any invalidity found in one section from impairing any other section. The severability clause provides that the headings and sections of the act are intended to be read together and, if any portion or the application of the act to any person or circumstance is held invalid or unconstitutional, such a finding will not affect the other provisions or applications of the act if they can still be given effect.

The bill provides for transitional administrative needs and orderly compliance with the provisions of the act. Upon the effective date of the act, the utility functions describe in s. 7.08(5) of Section 1 of the bill are authorized and shall continue until amended, changed, or repealed by GRUC. The bill further authorizes the chairperson and secretary/treasurer, upon appointment, to execute documents required for the transition and to provide required direction and administration of utilities functions for up to 60 days during the selection of the CEO/GM or the conservator, interim, or temporary CEO/GM.

Additionally, the bill states that all laws or parts of laws in conflict with the act are repealed. It also provides that the City of Gainesville and Alachua County Charter provisions, ordinances, resolutions, decrees, or parts thereof, in conflict with the act are repealed to the extent of such conflict.

Section 4

The bill provides that the following referendum question will be posed:

- Shall the Charter of the City of Gainesville be amended by creating the Gainesville Regional Utilities Commission, a municipally owned, independent, appointed, and representative commission?
  _____Yes
  _____No

Section 5

The bill provides that, except for Sections 4 and 5 of the bill, the act only takes effect upon its approval by a majority vote of the qualified electors of the City of Gainesville voting in a referendum to be held in conjunction with the next Presidential Preference Primary election to be held in Alachua County.

B. SECTION DIRECTORY:

Section 1: Repeals Section 3.06 of Article III in Section 1 of Chapter 90-394, Laws of Florida.

Section 2: Amends the charter of the City of Gainesville to establish the Gainesville Regional Utilities Commission to oversee and manage the city's municipal utility systems, which include the electric utility system, water utility system, wastewater utility system, re-use water utility system, natural gas utility system, communications utility system.

Section 3: Provides a severability clause; provides for transitional administrative needs and orderly compliance with the provisions of the act; and includes a provision repealing all laws or parts of laws in conflict with the act.

Section 4: Provides the question to be posed to electors when voting whether to approve the act at a referendum.

Section 5: Provides an effective date for all provisions except Sections 4 and 5 as upon approval by a majority of the voters at a referendum.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [] No [X]

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes [X] No []

IF YES, WHEN? Referendum is required at the next primary election to be held in Alachua County.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires implementation through executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill refers to the new utilities commission as both "Gainesville Regional Utilities Commission" and "Regional Utilities Commission of the City of Gainesville" at different locations throughout the bill. For clarity, one name should be adopted and used throughout.

The bill does not clearly specify ownership of utility systems after creation of GRUC. The bill grants GRUC "plenary authority for the express purpose of acquiring, constructing, operating, providing, financing, and otherwise having complete authority with respect to utilities." The bill also authorizes GRUC to dispose of a limited portion of "*its* used and useful assets." While the bill does not expressly provide for ownership, it provides a broad statement of authority and specifically allows GRUC to finance, acquire, and construct utilities and to dispose of "its" assets. Thus, the bill could be construed to allow GRUC to own utilities systems. These provisions could be clarified to ensure the bill is implemented as intended.

The bill refers throughout to the independence of GRUC from the City, prohibiting any manner of interference, limiting communications, and providing GRUC authority to act alone for certain purposes, including the establishment of future budgets. If the bill is not intended or construed to allow GRUC to own utilities systems in its own right, it appears to authorize GRUC to finance, acquire, and construct such systems in the name of the City of Gainesville without consultation with or approval by the City Commission. Because the bill does not specify any limits on GRUC's financing authority, it may be construed to authorize GRUC to issue general obligation bonds in the name of the City. Further, because the bill defines "utilities" to include utility systems that are acquired in the future, beyond those systems currently operated by GRU, it may be construed to authorize GRUC to enter new lines of utility business in the name of the City.

The bill grants GRUC the power of eminent domain to acquire property (other than state or federal property) within Alachua County and, where permitted by law, outside of Alachua County for locating electric utility and water utility facilities, and for any other "nonstated" use by GRUC in the exercise of its plenary authority. The bill does not define "nonstated" uses.

The bill prohibits preferential rates for users of the same class or other subsidies. This may prohibit economic development incentives to attract or retain business.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Local Government Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Repeals a current charter provision, Section 3.06 of Article III in Section 1 of Chapter 90-394, Laws of Florida, relating to the general manager for utilities, because the bill renders that provision obsolete.
- Deletes the following provisions in Section 1 of HB 1325: 7.06(2), 7.07(4)-(10), 7.07(11)(d)-(e), 7.07(12), 7.07(15)-(21), 7.08(1)-(4), 7.08(6), 7.08(8), 7.08(10)-(16), 7.09(24)-(28), 7.08(31)(a)-(h), and 7.08(33).
- Reduces the salary for utility commissioners from 80% to 60% that of a City Commissioner.
- Reduces commission member terms from 5 to 4 years.
- Provides that the amount transferred the City's General Revenue Fund cannot be more than 9% or less than 7% of gross revenues, after first paying other expenses.

On March 24, 2015, the Energy & Utilities Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarify the qualifications for appointment to GRUC, including the qualifying fields of study.
- Clarify provisions concerning representation on GRUC by members who are qualified electors of the City of Gainesville and members who are qualified electors of the unincorporated area of Alachua County.
- Clarify provisions related to the suspension or removal of a voting member upon request of the remaining members to the Governor.
- Clarify that a member seeking a waiver of GRUC's Code of Ethics and Business Conduct is not prohibited from attending the meeting but is prohibited from participating in deliberations, debate, or vote on the request.
- Remove a provision that authorized GRUC to determine, in certain circumstances, that certain contracts of the City of Gainesville, its utility system, or GRUC, are invalid and voidable.

This analysis is drafted to the committee substitute as passed by the Energy & Utilities Subcommittee.

HOUSE OF REPRESENTATIVES
2015 LOCAL BILL CERTIFICATION FORM

BILL #: HB1325

SPONSOR(S): Representative Perry

RELATING TO: Alachua County

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Alachua County Legislative Delegation

CONTACT PERSON: Kayla-Ann Lott

PHONE NO.: 845 476-4500 **E-Mail:** Kayla-Ann.Lott@myfloridahouse.gov

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [X] NO [ ]

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [X] NO [ ]

Date hearing held: January 29th 2015

Location: Santa Fe College Kirkpatric Center

(3) Was this bill formally approved by a majority of the delegation members?

YES [X] NO [ ]

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [ ] NO [ ] **DATE** N/A

Where? N/A **County** N/A

Referendum in lieu of publication: YES [X] NO [ ]

Date of Referendum March 2016

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES ☐ NO ☐ NOT APPLICABLE ☒

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES ☐ NO ☐ NOT APPLICABLE ☒

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES ☐ NO ☒

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Local Government Affairs Subcommittee.

Delegation Chair (Original Signature) — Date: 3/6/15

Representative Clovis Watson

Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES
2015 ECONOMIC IMPACT STATEMENT FORM

Read all instructions carefully.
House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts, and has personal knowledge of the information given (for example, a chief financial officer of a particular local government). Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed. Additional pages may be attached as necessary.

BILL #: HB 1325

SPONSOR(S): Representative Keith Perry

RELATING TO: City of Gainesville & Part of Alachua County (Gainesville Regional Utility (GRU) Service Area)
[Indicate Area Affected (City, County or Special District) and Subject]

I. REVENUES:

These figures are new revenues that would not exist but for the passage of the bill. The term "revenue" contemplates, but is not limited to, taxes, fees and special assessments. For example, license plate fees may be a revenue source. If the bill will add or remove property or individuals from the tax base, include this information as well.

	FY 15-16	FY 16-17
Revenue decrease due to bill:	$ 0	$ 0
Revenue increase due to bill:	$ 0	$ 0

II. COST:

Include all costs, both direct and indirect, including start-up costs. If the bill repeals the existence of a certain entity, state the related costs, such as satisfying liabilities and distributing assets.

Expenditures for Implementation, Administration and Enforcement:

FY 15-16	FY 16-17
$ 160,000	$ 160,000

Please include explanations and calculations regarding how each dollar figure was determined in reaching total cost.

The five (5) new utility commissioners would receive 80% of City Commissioner Salaries (without benefits) + utility-related travel & personal expenses

III. FUNDING SOURCE(S):

State the specific source from which funding will be received, for example, license plate fees, state funds, borrowed funds or special assessments.

If certain funding changes are anticipated to occur beyond the following two fiscal years, explain the change and at what rate taxes, fees or assessments will be collected in those years.

		FY 15-16	FY 16-17
Local:	Gainesville Regional Utility (GRU) Revenues	$ 160,000	$ 160,000
State:		$ N/A	$ N/A
Federal:		$ N/A	$ N/A

III. ECONOMIC IMPACT:

Potential Advantages:

Include all possible outcomes linked to the bill, such as increased efficiencies, and positive or negative changes to tax revenue. If an act is being repealed or an entity dissolved, include the increased or decreased efficiencies caused thereby.

Include specific figures for anticipated job growth.

1. Advantages to Individuals: The utility will be operated as a cost-based utility without preferences within rate classes

2. Advantages to Businesses: The utility will be operated as a cost-based utility without preferences within rate classes

3. Advantages to Government: Utility gets stable qualified, depoliticized governance. City Commissioners are freed to focus on city issues. This is the typical governance structure for a utility the size of GRU.

Potential Disadvantages:

Include all possible outcomes linked to the bill, such as inefficiencies, shortages, or market changes anticipated.

Include reduced business opportunities, such as reduced access to capital or training.

State any decreases in tax revenue as a result of the bill.

1. Disadvantages to Individuals: Those with political connections would lose preferences

2. Disadvantages to Businesses: Those with political connections would lose preferences

3. Disadvantages to Government: City Commissioners would not be able to use the utility in order to hold office or advance political agendas.

IV. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Include all changes for market participants, such as suppliers, employers, retailers and laborers. If the answer is "None," explain the reasons why. Also, state whether the bill may require a governmental entity to reduce the services it provides.

1. Impact on Competition:

None. The utility remains a monopoly - except for telecommunications There will be no reduction in service.

2. Impact on the Open Market for Employment:

Political preference is prohibited in hiring thus improving the open market for employment

V. SPECIFIC DATA USED IN REACHING ESTIMATES:

Include the type(s) and source(s) of data used, percentages, dollar figures, all assumptions made, history of the industry/issue affected by the bill, and any audits.

These statements are the result in fifteen (15) years of close scrutiny by an attorney with specialized knowledge concerned with scoring GRU utility bills and the negative impact on his own and all businesses in our community.

PREPARED BY: James J. Konish
[Must be signed by Preparer]

Print preparer's name: James J. Konish

March 9, 2015
Date

TITLE: Attorney / Publisher / Expert In utility, Tax & Local Government Law
(Examples - Executive Director, Actuary, Chief Accountant, or Budget Director)

REPRESENTING: Self / Tenants / victims of GRU overcharges

PHONE: (352) 871-4747

E-MAIL ADDRESS: FAK@BellSouth.net

A bill to be entitled

An act relating to the City of Gainesville, Alachua County; amending chapter 12760, Laws of Florida (1927), as amended by chapter 90-394, Laws of Florida; repealing section 3.06, relating to the general manager for utilities; creating the Gainesville Regional Utilities Commission, a regional independent utilities commission, and prescribing its authority; repealing applicable existing and conflicting charter provisions and ordinances; providing a ballot statement; requiring a referendum; providing an effective date.

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

Section 1. Section 3.06 of Article III of section 1 of chapter 90-394, Laws of Florida, is repealed.

Section 2. Article VII is added to chapter 12760, Laws of Florida (1927), as amended by chapter 90-394, Laws of Florida, to read:

ARTICLE VII GAINESVILLE REGIONAL UTILITIES COMMISSION

7.01 Establishment.—

(1) There is hereby created and made a part of the government of the City of Gainesville ("city"), a regional

independent utilities commission to be known and designated as the "Gainesville Regional Utilities Commission," ("utilities commission") which shall consist of five voting members. For the purposes of this act, unless otherwise designated, the term "utilities commission" shall mean the Regional Utilities Commission of the City of Gainesville as a legal entity, organization, or governing body and the term "member" shall mean a member of the utilities commission. The term "utilities" shall mean, unless otherwise specified, the electric utility system, water utility system, wastewater utility system, reuse water utility system, natural gas utility system, communications utility system, and such other utility systems as are acquired in the future.

(2) As specified in this article, the utilities commission shall be created and remain an independent, not-for-profit enterprise and municipal legal entity with plenary authority and shall be governed by an independent governing commission consisting of five appointed members who are to be appointed by the city commission in compliance with the provisions of this act. Further, the utilities commission shall remain a part of the government of the City of Gainesville. The utilities commission is owned by the citizens of the City of Gainesville.

(3) The Regional Utilities Commission of the City of Gainesville is created with plenary authority for the express purpose of acquiring, constructing, operating, providing,

financing, and otherwise having complete authority with respect to utilities.

7.02 Commission voting members.—

(1)(a) There shall be five voting members of the utilities commission, each appointed by a simple majority vote of the city commission to a 4-year term, with terms staggered as set forth in this article.

(b) To qualify for appointment as a voting member, a person must:

1. Reside year-round within the utilities commission's electric service territory of the electric utility system.

2. Receive service as a customer of the utilities commission.

3. Possess, at a minimum, a 4-year baccalaureate degree from an accredited institution with a major area of study in public affairs, business, law, economics, accounting, engineering, finance, energy, or another field substantially related to the duties and functions of the utilities commission or, alternatively, be an owner of, or partner or officer in, a business with sales exceeding $5 million in its fiscal year ended before the appointment.

4. Have not been convicted of a felony as defined by general law and have not been convicted under a plea of nolo contendere to any charge involving a felony as defined by general law.

Each voting member must maintain these qualifications and representative obligations throughout the term of appointment and comply with other member requirements established in this article.

(c) In addition to these qualifications, each voting member must be a qualified elector of the City of Gainesville, except that:

1. At all times, a minimum of one voting member must be a qualified elector of Alachua County, appointed from the unincorporated area of Alachua County ("county").

2. The composition of the utilities commission shall be adjusted to reflect the ratio of total electric meters serving customers in the unincorporated area of Alachua County to total electric meters serving all electric customers based on the most recent annual information provided by the utilities commission to the city commission. For example, at such time as the ratio of total electric meters serving customers in the unincorporated area of Alachua County to total electric meters serving all electric customers reaches 40 percent, the city commission must appoint a second voting member from the unincorporated area of the county to serve the next term that would otherwise be served by a qualified elector of the City of Gainesville. If the ratio subsequently falls below 40 percent, the city commission must appoint a qualified elector of the City of Gainesville to serve the next term that would otherwise be served by a qualified elector from the unincorporated area of the county.

(d) The utilities commission shall have the power to make and adopt such rules and regulations, consistent with and not in violation of this act and applicable law, as it deems prudent for the management, administration, and regulation of the fiduciary, business, and other affairs of the utilities commission.

(2) Each voting member shall be and remain qualified as stated within this act. Until January 1, 2020, no current or previous employee having been employed with the city after January 1, 2000, or with the county after January 1, 2000, nor current or previous elected or appointed officer or official of the city after January 1, 2000, or the county after January 1, 2000, shall become a member, except that a qualified voting member initially first appointed to the utilities commission in 2016 as provided for in this act shall be considered for subsequent reappointment provided that such individual remains otherwise qualified and chooses to be considered for reappointment. Further, no voting member who has been properly appointed for two full, consecutive 4-year terms shall succeed herself or himself.

7.03 Voting member terms.—

(1) The city commission shall make initial utilities commission member appointments within 90 calendar days after the approval of the referendum required by this act. The initial terms of office for the five appointed members shall commence at 12:01 a.m. on October 4, 2016. The said appointments called for

in this act and shall be as follows: one member will be designated to serve 1 year after the first Wednesday after said appointment in 2016; one member will be designated to serve 2 years after the first Wednesday after said appointment in 2016; one member will be designated to serve 3 years after the first Wednesday after said appointment in 2016; one member will be designated to serve 4 years after the first Wednesday after said appointment in 2016; and one member will be designated to serve 5 years after the first Wednesday after said appointment in 2016. Members subsequently appointed in each respective year beginning in 2017 will be appointed to and serve a full 4-year term. Members will normally hold office for 4-year terms commencing at 12:01 a.m. of the first Wednesday after the referendum anniversary day of the year in which they are appointed or until their successors in office are appointed or as may be provided elsewhere in this act.

(2) The city commission shall expeditiously schedule an appointment session and fill any utilities commission voting member vacancy within 2 months after a permanent vacancy occurs on the utilities commission or becomes known by virtue of resignation, death, or removal in order to fill the remaining period of the vacant member term provided that such remaining term exceeds 3 months.

(3) As provided for elsewhere in this article, a voting member may be removed from office as provided by law upon conviction of malfeasance or misfeasance as a member or while

holding another public office or upon conviction of a felony. A voting member may also be removed for failure to maintain all voting member qualifications or for violation of a provision of this act or a provision of stipulated governance policies as may be subsequently adopted and enforced by the utilities commission.

7.04 Utilities commission; initial meeting, organization, and oath.—

(1) The first appointed utilities commission shall initially meet at the utilities commission's headquarters at 6:00 p.m. on the second Wednesday of October after the initial appointment of all members in 2016. The utilities commission shall meet at least once each month at the offices of the utilities commission or as otherwise may be determined. All meetings of the utilities commission shall be open to the public and minutes shall be kept of all meetings. The utilities commission shall have plenary authority to promulgate policies, rules, and regulations for the conduct of its meetings and the operation and management of its utilities. The initial meeting of the first appointed utilities commission and at each subsequent first regular meeting of the utilities commission after each regularly scheduled annual appointment occurs as specified in section 7.03 shall include an organizational agenda item during this organizational meeting in which the new utilities member shall be sworn by the Mayor of the City of Gainesville and the voting members shall elect a chairperson, a

vice chairperson, and a secretary/treasurer from among its voting membership.

(2) Before taking office for any term each member shall swear or affirm: "I do solemnly swear (or affirm) that I will support, honor, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State and under the Charter of the City of Gainesville, or the Charter of the County of Alachua; that I am a full-time city or county resident and customer within the electric service territory of the Regional Utilities Commission of the City of Gainesville; and that I will well and faithfully perform the duties and maintain the qualifications of a member of the Regional Utilities Commission of the City of Gainesville on which I am now about to enter."

7.05 Member compensation.—Each member shall be paid such salary as may change from time to time and shall be a salary of 60 percent each month of the salary of a city commissioner and include adjustments linked to the consumer price index, and necessary individual expenses incurred solely in carrying on and conducting the business of the utilities commission shall be paid in accordance with utilities commission policy and procedures and subject to the approval of the utilities commission. No supplemental benefits are provided for a member position.

7.06 Appointment of chief executive officer/general manager.—

(1) The utilities commission shall have full and exclusive authority over the management, operation, and control, now or hereafter, over the city's utilities and shall employ and discharge all employees only through the chief executive officer/general manager ("CEO/GM") who directs and administers utilities functions under the policies and authority authorized solely by the utilities commission.

(2) A member shall not be selected as the first CEO/GM.

7.07 General provisions.—

(1) All business of the utilities commission shall be overseen by its members.

(2) The utilities commission shall operate only as a municipally owned, cost-based, not-for-profit, and political subdivision of the state with no ad valorem taxing authority.

(3) The utilities commission is comprised of voting and nonvoting members. Nonvoting members shall consist of the nondiscretionary utilities commission's CEO/GM at a minimum; additional discretionary nonvoting members consisting of other utilities commission staff executives with the concurrence of the utilities commission's CEO/GM; and external individuals who reside in the electric service area of the utilities commission and who are appointed and removed solely by the utilities commission. Such discretionary nonvoting members shall not exceed a total of three members at any given time and shall not

retain such appointments for more than 2 years, and such discretionary nonvoting members may only be designated as a member of the utilities commission for administrative participation purposes and serve only in the capacity as the utilities commission formally shall designate. Such discretionary nonvoting members may be reappointed once for no more than 2 additional years. Such discretionary nonvoting members shall receive no compensation for said service except for necessary individual expenses incurred solely in carrying on and conducting the business of the utilities commission only in the capacity the utilities commission has formally designated and in accordance with commission policy and procedures and subject to the approval of the utilities commission.

(4)(a) Members may only be removed or suspended from office by the Governor, upon request by the utilities commission acting in accordance with general law and as specified by this act. Upon complaint or on its own motion, the utilities commission, by unanimous resolution specifying facts sufficient to advise a member as to the basis for the commission's action and after reasonable notice to the member and an opportunity for the member to be heard:

1. May request that the Governor suspend or remove a member for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, permanent inability to perform official duties, or failure to maintain the qualifications established in this article.

2. May request that the Governor suspend a member who is arrested for a felony or for a misdemeanor related to the duties of office or who is indicted or informed against for the commission of any federal felony or misdemeanor or state felony or misdemeanor.

3. May request that the Governor remove from office any municipal board member who is convicted of a federal felony or misdemeanor or state felony or misdemeanor. For the purposes of this subparagraph, any person who pleads guilty or nolo contendere or who is found guilty shall be deemed to have been convicted, notwithstanding a suspension of sentence or the withholding of adjudication.

(b) Upon consideration of a written independent report prepared at the request of the utilities commission in relation to a matter for which the commission has requested suspension of a member, the utilities commission, by majority vote, may reinstate the member at any time before his or her removal.

(c) The suspension of a member by the Governor creates a temporary vacancy during the suspension which shall be filled by a temporary appointment by the city commission for the period of the suspension, not to extend beyond the term of the suspended member. The temporary appointment shall be made in the same manner as provided in this article for the filling of a permanent vacancy.

(d) If the member is acquitted or found not guilty or is otherwise cleared of the charges which were the basis of the

arrest, indictment, or information by reason of which he or she was suspended, the Governor shall revoke the suspension and reinstate the member to office.

(e) A member who is the subject of a proceeding to request suspension or removal or a proceeding to consider reinstatement under this paragraph may not participate in the utilities commission's deliberations, debate, or vote on the matter.

(5) The private tangible and intangible property of any individual member of the utilities commission shall not be subject to the payment of, and no member of the utilities commission shall be individually responsible for, commission debts to any extent whatsoever.

(6)(a) Any person who is or was an officer, executive, or member of the utilities commission and who is or was a party to any threatened, pending, or completed proceeding, by reason of the fact that he or she is or was an officer, executive, or member of the utilities commission legitimately acting in the course of his or her duties or is or was serving at the request of the utilities commission as an officer, executive, or member or agent of a corporation, company, partnership, joint venture, trust, or other enterprise shall be indemnified by the utilities commission to the full extent permitted by law against all expenses and liabilities incurred in connection with such proceeding, including any appeal thereof. Notwithstanding the foregoing, the utilities commission shall indemnify such person in connection with a proceeding initiated by that person only if

such proceeding was authorized by the utilities commission; provided, however, that the utilities commission shall indemnify such person in connection with a proceeding to enforce such person's rights under this provision. Such person shall also be entitled to advancement of expenses incurred in defending a proceeding in advance of its final disposition to the full extent permitted by law, subject to the conditions imposed by law.

(b) Any indemnification or advance of expenses under this article shall be paid promptly, but within 30 calendar days, under any event after the receipt by the utilities commission of a written request therefore from the person to be indemnified, unless with respect to a claim for indemnification, the person is not entitled to indemnification under this provision. Unless otherwise provided by law, the burden of proving that the person is not entitled to indemnification shall be on the utilities commission.

(c) The right of indemnification under this article shall be a contract right inuring to the benefit of the persons entitled to be indemnified hereunder and no amendment or repeal of this article shall adversely affect any right of such persons existing at the time of such amendment or repeal.

(d) The indemnification provided hereunder shall inure to the benefit of the heirs, executors, and administrators of a person entitled to indemnification hereunder.

(e) The right of indemnification under this article shall be in addition to and not exclusive of all other rights to which persons entitled to indemnification hereunder may be entitled. Nothing contained in this article shall affect any rights to indemnification to which persons entitled to indemnification hereunder may be entitled by contract or otherwise under law.

(7) To effect the unrestricted transfer of commission governing authority and control of land, facilities, equipment, licenses, debt, funds, entitlements, or any other appropriate utilities activity exercised by the utilities commission under the authority of this act, the city commission and the city shall create such conveyance instruments, power of attorney, or other appropriate instruments as necessary for execution by and at the will of the utilities commission to be used in accordance with this act. Furthermore, the city commission and the city shall not encumber such conveyance by establishing conditions precedent or administrative requirements before or after the effective date of this article.

(8) A special meeting with the city commission shall be held whenever called by the chairperson or if demanded by the city commission in writing and delivered to the secretary/treasurer.

(9) The CEO/GM, through assigned staff, is responsible for providing an orientation and training program for new members which includes providing information designed to familiarize new members with the utilities commission's business and general

industry; its strategic plans; its significant financial, accounting, and risk management issues; its compliance programs; its code of business conduct and ethics; its principal officers and executives; its internal and independent auditors; and its key policies and practices. This orientation is designed to be conducted within a reasonable period of time after the meeting at which new members are sworn. In addition to the orientation program, staff management also will periodically provide materials or briefing sessions for all members on subjects that would assist them in discharging their duties. Commission members are also encouraged to attend appropriate sessions or programs and review materials relating to the responsibilities of members of publicly owned utilities.

7.08 Powers and duties.-

(1) Consistent with the provisions and effective date of this act, such previous applicable utilities-related ordinances, policies, rates, fees, rules, regulations, budgets, and other provisions previously adopted under the Charter of the City of Gainesville are hereby considered as adopted, reenacted, or assumed by the utilities commission for transition purposes until such time that the utilities commission alone, through appropriate commission actions and resolutions, shall subsequently change, publish, and enforce such policies, rates, fees, rules, regulations, budgets, and other provisions and requirements stipulated by this act.

(2) Exercise the power of eminent domain to acquire property, except state or federal, located within Alachua County, and exercise the power of eminent domain outside the county where permitted by general law, for the sole purpose of locating electrical generating, transmission, or distribution facilities of any of its utilities; water production, treatment, transmission, and distribution facilities; and for a nonstated use by the utilities commission in the performance and exercise of any of its duties, rights, or plenary authority.

(3) Have the exclusive power and authority to bill and collect the prescribed fees or charges for all utilities and services rendered under its control and, when collected, the flow of funds shall be: first, the payment of all operating and maintenance expenses of said utilities; second, the funding of all commission discretionary or required reserves, including those established by revenue certificates previously issued by the city or said commission for projects under commission control, including the debt service payments of all such revenue certificates as the same become due; and, third, the payment to the general fund of the city from revenues of the utilities under the utilities commission's control a sum, after the effective date of this legislation, not to exceed 9 percent or to be less than 7 percent of the gross revenues. Said designated payments by the utilities commission to the city's general fund shall be made monthly. At the sole discretion of the utilities commission, any surplus, if any, may be paid to the general fund

of the city after reserving an adequate fund for operation and maintenance expenses, capital improvements, and other contingencies as solely determined by the utilities commission.

(4) Submit to the city a monthly statement showing all sums or amounts received, operating expenses, amount charged to depreciation and extensions, reserve fund and amount appropriated to interest, and sinking funds. The fiscal year of the utilities commission shall begin October 1 and end September 30 of each year.

(5) Diligently enforce and collect all fees, rates, or other charges for the services and facilities of the utilities, and take all steps, actions, and proceedings for the enforcement and collection of such fees, rates, or other charges which shall become delinquent to the full extent permitted or authorized by the laws of the State of Florida.

(6) Ensure that no entity of the city, county, or state, no elected city or county official, no officer or executive of the city or county, not the utilities commission, and no member may dictate any employment for commission positions or in any manner interfere with the independence of commission officers, executives, or employees in the performance of their duties. Except for the purpose of an inquiry for information or public records, the city commission or the Alachua County Board of County Commissioners and all of their members must communicate with the utilities commission solely through the utilities commission secretary/treasurer regarding commission business,

and the city commission, the Alachua County Board of County Commissioners, any respective city or county commissioners, the Gainesville Regional Utilities Commission, and members may not give, either publicly or privately, any individual orders to or interfere with any direct or indirect subordinates of the CEO/GM, including staff officers and executives, employees, contractors, consultants, or other agents.

(7) Ensure that individual members are granted complete access to the utilities commission's management, any and all records and documents, and any and all transactions in accordance with law and subject to reasonable advance notice to the CEO/GM and reasonable efforts to avoid disruption to management, business, and operations. The utilities commission and each committee shall have access to any independent legal, financial, or other advisors, as they may deem necessary in their sole discretion. However, inquiry and information requests considered by the CEO/GM as excessive or interfering with an employee's or work unit's performance of its duties may be presented to the chairperson for mediation before filing a formal interference complaint by the CEO/GM with the utilities commission.

(8) Ensure that the utilities commission does not, in any manner, dispose of or agree to sell or convey the utilities commission's used and useful assets exceeding 5 percent of the respective individual utility's total assets, using depreciated

book value, unless the utilities commission does so with the prior approval of a simple majority vote of the city commission.

(9) Ensure that to the full extent permitted by law, the city will not grant, cause, consent to, or allow the granting of any franchise or permit to any person, firm, corporation, body, agency, or instrumentality whatsoever, for the furnishing of services which will compete with those of the utilities commission. No discriminatory franchise, right-of-way, license, permit, tax, or usage fee shall be levied upon the utilities commission or its utilities by the city or by the county unless provided by general law.

(10) Not render or cause to be rendered, directly or indirectly, any free utilities, subsidies, sponsorships, grants, contributions, donations, free services, or in-kind services of any nature from the utilities or commission, nor will any preferential rates be established for users of the same class; the utilities commission and the city or county, including its departments, agencies, and instrumentalities, shall use the services provided by the utilities commission within the utilities commission's service areas, or any part thereof, and the same rates, fees, or charges applicable to other customers receiving like services under similar circumstances shall be charged to the utilities commission and the city or county and any such department, agency, or instrumentality. Such charges shall be paid as they become due. The revenues so received shall be deemed to be revenues derived from the operation of the

utilities and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the utilities.

(11) Ensure that all existing City of Gainesville authority, laws, ordinances, resolutions, and administrative regulations, interpretations, franchises, and controls directly and indirectly affecting and controlling said utilities are hereby conveyed to and exclusively vested within said commission and its respective governance and authority as contained herein. All rights, claims, actions, orders, and legal or administrative proceedings involving the utilities commission immediately prior to the effective date of this act shall continue, except as modified pursuant to the provisions of and plenary authority granted by this act.

(12) Shall ensure the development of an ethics policy and a code of business conduct policy which shall be reviewed at least biennially. Such policy and code shall be adhered to in accordance with this act and any additional adherence requirements which may subsequently be approved by the utilities commission. Members, as well as all officers, executives, and management and supervisory employees, shall each acknowledge annually in writing their compliance with the utilities commission's Code of Ethics and Business Conduct. Any waiver of this requirement for a member, said officer, said executive, or said employee shall only be granted unanimously by vote of the full commission. Any member of the utilities commission who

requests a waiver may not participate in the deliberations, debate, or vote on the request.

(13) Ensure, except as otherwise specifically provided in this act, that the rights or privileges, if any, of persons who were city utility employees immediately before the effective date of this act are not affected or impaired.

Section 3. (1) SEVERABILITY.—Headings and sections of this act are not intended to be construed, limiting, or interpreted in isolation from each other. If any word, phrase, clause, paragraph, section, or provision of this act or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of this act which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this act are declared severable.

(2) TRANSITION.—In order to provide for the transitional administrative needs and orderly compliance with the provisions in this act, upon the effective date of this act, utility commission functions as described in section 7.08(5) are authorized and shall continue until amended, changed, or repealed by the utilities commission. The chairperson and secretary/treasurer are authorized, upon their respective appointment by the utilities commission, to execute documents required for the transition as may be appropriate or otherwise determined by the utilities commission and to provide required

direction and administration of utilities functions for up to 60 calendar days during such time as the selection of the CEO/GM or a conservator/CEO/GM, interim/CEO/GM, or temporary/CEO/GM is in process as provided in section 7.06 of the charter.

(3) CONFLICT WITH LAWS.—All laws or parts of laws in conflict with this act are repealed. City of Gainesville and Alachua County Charter provisions, ordinances, resolutions, decrees, or parts thereof, in conflict herewith are to the extent of such conflict hereby also repealed.

Section 4. The referendum question shall be posed as follows:

Shall the Charter of the City of Gainesville be amended by creating the Gainesville Regional Utilities Commission, a municipally owned, independent, appointed, and representative commission?

____ Yes

____ No

Section 5. This act shall take effect only upon its approval by a majority vote of those qualified electors of the City of Gainesville voting in a referendum to be held in conjunction with the next presidential preference primary election to be held in Alachua County, except that this section and section 4 shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1337 Pinellas County/Alcoholic Beverage Temporary Permits
SPONSOR(S): Peters
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 1 N	Darden	Kiner
2) Regulatory Affairs Committee		Brown-Blake	Hamon

SUMMARY ANALYSIS

General law authorizes the Department of Business and Professional Regulation's Division of Alcoholic Beverages and Tobacco (Division) to issue up to three temporary permits per calendar year to a bona fide nonprofit civic organization to sell alcoholic beverages. The beverages sold pursuant to the permit must be consumed in the designated event area and are subject to any state law or local ordinance regulating the time for selling alcoholic beverages. The organization applying for a permit must present a local building and zoning permit with its application and pay a $25 application fee. Permits are valid for up to three days. All net profits from the sale of beverages pursuant to the permit must be retained by the organization.

The Legislature has previously authorized the Division to issue up to fifteen additional temporary alcoholic beverage permits to bona fide nonprofit civic organizations in nine municipalities around the state. Each of these acts specified an area in which nonprofits could utilize the permits.

This bill would authorize the Division to issue up to fifteen additional temporary alcoholic beverage permits to a bona fide nonprofit civic organization operating in Pinellas County. An organization applying for a temporary permit must submit a valid special event permit, specifying a designated area for the consumption of alcoholic beverages, issued by an incorporated municipality in Pinellas County, in addition to any documentation required by general law. Currently, there are approximately 3,450 nonprofit civic organizations in Pinellas County.

This bill will take effect upon becoming law.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapters 561-568, F.S., constitute Florida's Beverage Law.[1] The Department of Business and Professional Regulation's Division of Alcoholic Beverages and Tobacco (Division) is responsible for enforcement of the Beverage Law.[2]

A bona fide civic nonprofit organization may apply for up to three temporary alcoholic beverage permits per year.[3] The permits are valid for periods not exceeding three days and are subject to any state law or local ordinance regulating the time for selling alcoholic beverages.[4] The beverages sold pursuant to the permit must be consumed in the designated event area.[5] The organization applying for a permit must present a local building and zoning permit with its application to the Division and pay a $25 application fee.[6] All net profits from the sales must be retained by the organization.[7]

There are approximately 3,450 nonprofit civic organizations in Pinellas County.[8]

Previous special acts of the Legislature have authorized the Division to issue additional permits to civic nonprofit organizations operating in designated "downtown" areas.[9] Municipalities covered by these acts include:

- St. Petersburg;[10]
- Tallahassee;[11]
- Leesburg;[12]
- Eustis;[13]
- Tavares;[14]
- Mount Dora;[15]
- Clearwater;[16]
- Ocala;[17]
- Vero Beach.[18]

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[1] s. 561.01(6), F.S.
[2] s. 561.02, F.S.
[3] s. 561.422, F.S.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] This number was obtained by conducting a search for each municipality in Pinellas County on Guidestar.org, a website that gathers and disseminates information about IRS-registered nonprofit organizations and is used by the Division as a source for the number of nonprofit civic organizations in a city. As of a search on 4/1/15, Clearwater has 790 nonprofit civic organizations, Dunedin 161, Gulfport 41, Largo 368, Maderia Beach 37, Oldsmar 143, Pinellas Park 181, Safety Harbor 86, Seminole 178, St. Petersburg 1,375, St Pete Beach 64, and Tarpon Springs 34.
[9] *See* Ch. 2007-302, Laws of Fla. (authorizing the Division to issue up to fifteen additional temporary permits per calendar year in bona fide nonprofit organizations in downtown St. Petersburg).
[10] *Id.*
[11] Ch. 2008-294, Laws of Fla.
[12] Ch. 2009-262, Laws of Fla.
[13] Ch. 2010-251, Laws of Fla.
[14] Ch. 2010-252, Laws of Fla.
[15] Ch. 2011-260, Laws of Fla.
[16] Ch. 2012-244, Laws of Fla.
[17] Ch. 2014-253, Laws of Fla.

These acts generally authorize the Division to issue each requesting bona fide non-profit civic organization fifteen additional temporary permits per calendar year, on top of the three permits authorized by s. 561.422, F.S.[19] According to the below chart prepared by the Division,[20] 154 additional temporary permits were issued between the passage of the first special act in 2007 to the end of 2013.

City	Effective Date	2007	2008	2009	2010	2011	2012	2013	Total Permits
St. Petersburg	6/12/07	1	14	9	9	7	8	13	**61**
Tallahassee	6/17/08	N/A	5	1	4	4	0	2	**16**
Leesburg	6/2/09	N/A	N/A	0	7	16	4	20	**47**
Eustis	6/11/10	N/A	N/A	N/A	3	10	0	6	**19**
Tavares	6/11/10	N/A	N/A	N/A	0	4	0	0	**4**
Mount Dora	5/31/11	N/A	N/A	N/A	N/A	0	0	0	**0**
Clearwater	4/6/12	N/A	N/A	N/A	N/A	N/A	2	5	**7**
Total		**1**	**19**	**10**	**23**	**41**	**14**	**46**	**154**

Proposed Changes

The bill authorizes the Division to issue each requesting bona fide non-profit civic organization up to fifteen temporary alcoholic beverage permits in Pinellas County. These permits are in addition to the three permits authorized by s. 561.422, F.S.

Organizations applying for a temporary alcoholic beverage permit from the Division must submit a valid special event permit issued by an incorporated municipality in Pinellas County. The temporary alcoholic beverage permit issued to the organization only authorizes the sale of alcoholic beverages for consumption on the premises of a "special event permitted area" designated by the municipality.

The organization must also comply with all other applicable requirements of s. 561.422, F.S.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

B. SECTION DIRECTORY:

Section 1: Authorizes the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue a bona fide nonprofit civic organization in Pinellas County up to 15 temporary permits to sell alcoholic beverages per calendar year, in addition to the three temporary permits authorized by s. 561.422, F.S.

Section 2: Provides that the bill shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? February 28, 2015.

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[18] Ch. 2014-248, Laws of Fla.

[19] *See* Ch. 2007-302, Laws of Fla. (authorizing up to fifteen additional temporary permits); *but see* Ch. 2014-248, Laws of Fla. (authorizing up to twelve additional temporary permits).

[20] Department of Business and Professional Regulation Legislative Bill Analysis for HB 1367 (2014).

WHERE? The *Tampa Bay Times*, a daily newspaper published in Pinellas County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

91553

Tampa Bay Times
Published Daily

STATE OF FLORIDA } ss
COUNTY OF Pinellas County

Before the undersigned authority personally appeared **Amy Robison** who on oath says that he/she is **Legal Clerk** of the **Tampa Bay Times** a daily newspaper published at St. Petersburg, in Pinellas County, Florida; that the attached copy of advertisement, being a Legal Notice in the matter **RE: ST PETERSBURG ACT** was published on **Tampa Bay Times: 2/28/15.** in said newspaper in the issues of **B Pinellas**

Affiant further says the said **Tampa Bay Times** is a newspaper published in St.Petersburg, in said Pinellas County, Florida and that the said newspaper has heretofore been continuously published in said Pinellas County, Florida, each day and has been entered as a second class mail matter at the post office in St. Petersburg, in said Pinellas County, Florida for a period of one year next preceding the first publication of the attached copy of advertisement, and affiant further says that he/she neither paid not promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper

Amy Robison
Signature of Affiant

Sworn to and subscribed before me this 02/28/2015.

Kathleen J. Klase
Signature of Notary Public

Personally known ✓ or produced identification

Type of identification produced _____

KATHLEEN J. KLASE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE203640
Expires 6/20/2016

LEGAL NOTICE

NOTICE OF INTENT TO SEEK LEGISLATION

TO WHOM IT MAY CONCERN:

Notice is hereby given of intent to apply to the 2015 Legislature for passage of An act relating to Pinellas County; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue up to a specified number of temporary permits to a nonprofit civic organization to sell alcoholic beverages for consumption on the premises at a special event permitted area designated by an incorporated municipality; providing that the permits authorized by the act are in addition to certain other authorized temporary permits; requiring the nonprofit civic organization to comply with certain provisions of law in obtaining the permits authorized by the act; providing an effective date.

City of St. Petersburg
175 Fifth St. N.
St. Petersburg, FL 33701

2/28/2015 91553-1

HOUSE OF REPRESENTATIVES
2015 LOCAL BILL CERTIFICATION FORM

BILL #: HB 1337

SPONSOR(S): Kathleen Peters

RELATING TO: Pinellas County; Temporary Alcoholic Beverage Permits

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Pinellas County

CONTACT PERSON: Sally Everett

PHONE NO.: (727) 267-2111 **E-Mail:** sally.everett@stpete.org

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES ☑ NO ☐

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES ☑ NO ☐

Date hearing held: Tuesday, February 24, 2015

Location: University of South Florida, St. Petersburg, 200 6th Ave S, St. Petersburg

(3) Was this bill formally approved by a majority of the delegation members?

YES ☑ NO ☐

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES ☑ NO ☐ **DATE** February 28, 2015

Where? Tampa Bay Times **County** Pinellas

Referendum in lieu of publication: YES ☐ NO ☑

Date of Referendum _____

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES ☐ NO ☑ NOT APPLICABLE ☐

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES ☐ NO ☑ NOT APPLICABLE ☐

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES ☐ NO ☐

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Local Government Affairs Subcommittee.

Delegation Chair (Original Signature) — Date: 3/11/2015

Jeff Brandes
Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES
2015 ECONOMIC IMPACT STATEMENT FORM

Read all instructions carefully.
House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts, and has personal knowledge of the information given (for example, a chief financial officer of a particular local government). Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed. Additional pages may be attached as necessary.

BILL #: HB 1337

SPONSOR(S): Kathleen Peters

RELATING TO: Pinellas County; Temporary Alcoholic Beverage Permits
[Indicate Area Affected (City, County or Special District) and Subject]

I. REVENUES:

These figures are new revenues that would not exist but for the passage of the bill. The term "revenue" contemplates, but is not limited to, taxes, fees and special assessments. For example, license plate fees may be a revenue source. If the bill will add or remove property or individuals from the tax base, include this information as well.

	FY 15-16	FY 16-17
Revenue decrease due to bill:	$ N/A	$ N/A
Revenue increase due to bill:	$ 250.00	$ 250.00

II. COST:

Include all costs, both direct and indirect, including start-up costs. If the bill repeals the existence of a certain entity, state the related costs, such as satisfying liabilities and distributing assets.

Expenditures for Implementation, Administration and Enforcement:

FY 15-16	FY 16-17
$ 250.00	$ 250.00

Please include explanations and calculations regarding how each dollar figure was determined in reaching total cost.

Organizations must apply for a local permit to be a vendor at locally-sponsored events. Each permit costs $25. We estimate that in the near term permits will increase by 10 per year, or $250. Cost to grant the permits are negligible and estimated at the same cost as the permit. Estimates are for the City of St. Petersburg. Other communities in the county may see similar usage.

III. FUNDING SOURCE(S):

State the specific source from which funding will be received, for example, license plate fees, state funds, borrowed funds or special assessments.

If certain funding changes are anticipated to occur beyond the following two fiscal years, explain the change and at what rate taxes, fees or assessments will be collected in those years.

	FY 15-16	FY 16-17
Local:	$ 250.00	$ 250.00
State:	$ n/a	$ n/a
Federal:	$ n/a	$ n/a

III. ECONOMIC IMPACT:

Potential Advantages:

Include all possible outcomes linked to the bill, such as increased efficiencies, and positive or negative changes to tax revenue. If an act is being repealed or an entity dissolved, include the increased or decreased efficiencies caused thereby.

Include specific figures for anticipated job growth.

1. Advantages to Individuals: Increased vendors at local events, fairs, markets, concerts, etc.

2. Advantages to Businesses: Increased retail traffic at local events which will benefit retail establishments in adjacent areas with more customers and increased sales.

3. Advantages to Government: Increased revenues for local businesses and increased tourism traffic.

Potential Disadvantages:

Include all possible outcomes linked to the bill, such as inefficiencies, shortages, or market changes anticipated.

Include reduced business opportunities, such as reduced access to capital or training.

State any decreases in tax revenue as a result of the bill.

1. Disadvantages to Individuals: n/a

2. Disadvantages to Businesses: n/a

3. Disadvantages to Government: n/a

IV. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Include all changes for market participants, such as suppliers, employers, retailers and laborers. If the answer is "None," explain the reasons why. Also, state whether the bill may require a governmental entity to reduce the services it provides.

1. Impact on Competition:

No impact on competition. This only affects non-profit organizations' ability to participate as alcoholic beverage vendors at local city-sponsored events, and raise funds for their organizations.

2. Impact on the Open Market for Employment:

None. Participants are volunteers raising funds for local organizations.

V. SPECIFIC DATA USED IN REACHING ESTIMATES:

Include the type(s) and source(s) of data used, percentages, dollar figures, all assumptions made, history of the industry/issue affected by the bill, and any audits.

City of St. Petersburg Vendor permit history

PREPARED BY: _____
[Must be signed by Preparer]

Print preparer's name: Amy A. Fritz

3/11/15
Date

TITLE: Finance Director
(Examples - Executive Director, Actuary, Chief Accountant, or Budget Director)

REPRESENTING: City of St. Petersburg

PHONE: 727-892-5113

E-MAIL ADDRESS: aafritz@stpete.org

A bill to be entitled

An act relating to Pinellas County; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue up to a specified number of temporary permits to a nonprofit civic organization to sell alcoholic beverages for consumption on the premises within a special event permitted area designated by an incorporated municipality; providing that the permits authorized by the act are in addition to certain other authorized temporary permits; requiring the nonprofit civic organization to comply with certain provisions of law in obtaining the permits authorized by the act; providing an effective date.

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

Section 1. (1) Notwithstanding any other provision of law, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may issue to a bona fide nonprofit civic organization, upon application and presentation of a valid special event permit issued by an incorporated municipality in Pinellas County, a temporary permit authorizing the sale of alcoholic beverages for consumption on the premises within a special event permitted area designated by the municipality. Any such nonprofit civic organization may be

issued up to 15 temporary permits per calendar year and each temporary permit is valid for up to 3 days.

(2) The temporary permits authorized by this act are in addition to the three temporary permits authorized per year for a nonprofit civic organization pursuant to s. 561.422, Florida Statutes.

(3) The nonprofit civic organization shall comply with all other requirements of s. 561.422, Florida Statutes, in obtaining the temporary permits authorized by this act.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/CS/HB 165 Property and Casualty Insurance
SPONSOR(S): Regulatory Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

The Proposed Committee Substitute (PCS) contains changes for various types of property and casualty insurance. Issues addressed include:

- **Nonrenewal Notice for Property Insurance** – presently, personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the action, except, for such actions during hurricane season (Jun 1-Nov1), notice must be given by June 1, also insureds who have been covered by the insurer for five years must receive 120 days' notice; the PCS changes and makes uniform the due date for a notice of cancellation, nonrenewal, or termination – all will get at least a 120-day notice, however, with this change, some may receive such notice during hurricane season, instead of by June 1;

- **Neutral Evaluation in Sinkhole Claims** – currently, a notice of right to participate in the neutral evaluation program must be issued by the insurer upon receipt of the sinkhole testing report or when a claim denial is issued; the PCS requires such notices to be issued only if there is sinkhole coverage under the policy and if the sinkhole claim was submitted timely;

- **Personal Injury Protection (PIP) Insurance** – reimbursements for medical services are currently made consistent with the Medicare fee schedule in effect on March 1 of the year the service is rendered and the schedule in effect on March 1 applies for the remainder of that year; it is unclear what period "remainder of that year" describes; the PCS aligns the period in which services were rendered with the year the applicable fee schedule is in effect and states precisely the beginning and end of the year (March 1 through the end of the following February); and

- **Preinsurance Inspection of Private Passenger Motor Vehicles** – under current law, there are exemptions from required preinsurance inspections for "purchased" cars, if certain documents are provided; the PCS adds leased vehicles to the exemptions; allows insurers to elect to receive the documents; revises the types of documents that insurers may require; and, limits claim reimbursement and property damage coverage suspension based on the timing of document delivery.

The PCS has no fiscal impact on state or local government revenues or expenditures. The PCS is expected to have a positive impact on the private sector.

The PCS is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Nonrenewal Notice for Property Insurance

Under current law,[1] personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the cancellation, nonrenewal, or termination.[2] Further, for any cancellation, nonrenewal, or termination that takes effect between June 1st and November 30th, an insurer must provide at least 100 days written notice, or notice by June 1st, whichever is earlier. The June 1st notice deadline ensures policyholders whose property insurance policies will be cancelled, nonrenewed, or terminated during hurricane season (June 1st – November 30th) will receive notice of the cancellation, nonrenewal, or termination by the start of hurricane season.

The PCS repeals the required notice deadline of June 1st for policies being cancelled, nonrenewed, or terminated between June 1st and November 30th. The PCS also lengthens the notice time period under current law from 100 days to 120 days. Under the PCS, policyholders with a policy renewal date from June 1st to November 30th will receive 120 days' notice before the policy's cancellation, nonrenewal, or termination date. This change means some property insurance policyholders will receive notice of cancellation, nonrenewal, or termination during hurricane season (June 1st–November 30th). Under the PCS, policies renewing September 28th–November 30th that are being nonrenewed, cancelled or terminated by the insurer will receive notice of nonrenewal, cancellation or termination during hurricane season.

Policyholders with property insured by the same insurer for five years or more receive 120 days' notice of cancellation, nonrenewal, or termination and the PCS does not change the notice period for these policyholders.

Neutral Evaluation in Sinkhole Claims

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.[3] Beginning in 2007, catastrophic ground cover collapse became the mandatory coverage under basic policies and sinkhole loss became a mandatory offering that may be elected by the insured.[4] A sinkhole is defined as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.[5] Catastrophic ground cover collapse is also defined in the law.[6] It describes a more severe circumstance than sinkhole loss, primarily in that it renders the structure uninhabitable.

Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock. Sinkhole formation may be aggravated and accelerated by urbanization and suburbanization, by sub-surface water usage, and changes in weather patterns.

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[1] Section 627.4133(2), F.S.

[2] A 45-day notice of cancellation or nonrenewal, rather than the 100-day or 120-day notice is allowed if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. (s. 627.4133(2)(b)5., F.S.)

[3] Ch. 1981-280, L.O.F.

[4] Section 30, Ch. 2007-1, L.O.F.

[5] Section 627.706(2)(h), F.S.

[6] Catastrophic ground cover collapse is an abrupt ground cover collapse resulting in a depression that is clearly visible to the eye, with structural damage to building that is covered by the insurance, including the foundation, and the building is condemned and ordered vacated. S. 627.706(2)(a), F.S.

Insurers must offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.[7] At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building.[8] Furthermore, insurers can require an inspection of the property before providing sinkhole loss coverage.

Pursuant to s. 627.707, F.S., upon receipt of a claim for sinkhole loss to a covered building, the insurer must inspect the property to determine if sinkhole activity has caused structural damage. If such damage exists and the insurer is unable to identify a valid cause of the damage or identifies damage consistent with sinkhole loss, the insurer is required to conduct testing to determine the cause. However, the testing is only required if the policy covers sinkhole loss. The testing must meet statutory standards and a report must be issued that contains required information. The Department of Financial Services (Department) states that testing under s. 627.707, F.S., is necessary to proceed with the neutral evaluation program operated by the Department, but that the Department does not determine when the testing must be performed.[9]

Under s. 627.7074(3), F.S., following the report or a denial of the claim, the insurer must inform the policyholder, in writing, of their right to participate in the neutral evaluation program and must include an informational brochure prepared by the Department.[10] In the context of that subsection, it is not readily apparent whether the term "denial of the claim" means all denials, denials involving the existence of a sinkhole, or something else.

The neutral evaluation program is mandatory once requested by either party.[11] The Department has received requests for neutral evaluation from individuals in cases where the insurer alleges that there is no sinkhole coverage or that the sinkhole claim is untimely filed. Since the testing, and the appurtenant report, is unlikely to be done until contests over coverage and timeliness are resolved, the insureds may receive notice of the right to neutral evaluation at a point in the process that neutral evaluation cannot be done. So, notices may be going out to policyholders where the denial is based upon a lack of coverage, rather than only where the circumstances allow the Department to render an effective outcome on a neutral evaluation request.

The PCS requires an insurer to notify a policyholder of the right to participate in neutral evaluation of a sinkhole claim only if there is sinkhole coverage on the damaged property and if the sinkhole claim was submitted within the statute of limitations period,[12] which is two years after the policyholder knew or reasonably should have known about the sinkhole loss.

Personal Injury Protection Insurance

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,[13] amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The legislation provides in part that:

> [T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered... *and the applicable fee schedule or*

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[7] Section 627.706, F.S.

[8] By law, sinkhole loss coverage by Citizens Property Insurance Corporation (Citizens) does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios. Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

[9] Department of Financial Services, Division of Consumer Services, letter dated February 13, 2015, on file with the Insurance and Banking Subcommittee.

[10] Section 627.7074(3)(d), F.S., and Rule 69J-8.006, F.A.C. The Department's sinkhole pamphlet is posted on the web at http://www.myfloridacfo.com/division/Consumers/Mediation/documents/SettlingSinkholeClaim.pdf (last accessed: February 12, 2015).

[11] Section 627.7074(4), F.S., and Rule 69J-8.007(3), F.A.C.

[12] Section 627.706(5), F.S.

[13] Ch. 2012-151, L.O.F.

payment limitation applies throughout the remainder of that year [italics added for emphasis]...."

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied through the calendar year (through December 31st) or whether it applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,[14] stating that the plain language of the section requires the fee schedule in place on March 1st to apply throughout the following 365 days, or until the following March 1st.

The PCS amends s. 627.736(5)(a)2., F.S., to define a "service year" for rendered services, supplies, or care. For this purpose, a "service year" is from March 1 through the end of the following February. The period for the applicable Medicare fee schedule is then applied to this same period. This should provide certainty that reimbursement for any medical services, supplies, or care under PIP will be reimbursed based on the applicable Medicare fee schedule in effect on the preceding March 1.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires preinsurance inspections of private passenger motor vehicles, but lists various exemptions, including for new, unused motor vehicles "purchased" from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer's order, or copy of the title and certain other documentation. Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Physical damage coverage may not be suspended during the policy period due to the applicant's failure to provide the required documents. However, claim payments are conditioned upon and are not payable until the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

The PCS adds an exemption from preinsurance inspection for new, unused "leased" motor vehicles to the existing exemption for "purchased" vehicles, if the vehicle is leased from a licensed motor vehicle dealer or leasing company. If the insurer waives its right to a preinsurance inspection, it also provides an insurer the discretion to require persons who purchase or lease a new, unused motor vehicle to submit certain documents. Currently, such documents are required to be provided whenever the exemption is utilized. Persons who do not submit the required documentation, upon request, at the time the policy is issued are required to submit the document before any physical damage loss is payable under the policy. The PCS amends the list of documents that an insurer may require to include the vehicle registration in addition to the existing option of providing the vehicle title along with the window sticker and deletes from the list of documents the detailed dealer's invoice. Failure of the insurer to request the documentation is added to the prohibition on suspending coverage due to the insured's failure to provide documentation. Finally, the condition on claim payment pending receipt of documentation is revised to apply only if the carrier exercised its option to require the documentation.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program to correct a cross reference.

Section 2: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

Section 3: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 4: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

[14] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx (last accessed: January 23, 2015).

Section 5: Amends s. 627.744, F.S., relating to required preinsurance inspection of private passenger motor vehicles.

Section 6: Provides an effective date of July 1, 2015.

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:

Consolidating the notice of nonrenewal, cancellation, or termination into a uniform 120 day notice requirement would likely benefit insurers. Administering multiple conditions that set the notice period (currently the earlier of 100 days or June 1st, if the date falls between June 1 and November 30, or 120 days if the policyholder has been with the insurer for five or more years) would no longer be required. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

Limiting the issuance of notices of right to participate in the sinkhole neutral evaluation program would likely benefit insurers by requiring the notice in fewer instances. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to property and casualty insurance; amending s. 627.3518, F.S.; conforming a cross-reference; amending s. 627.4133, F.S.; increasing the amount of prior notice required with respect to the nonrenewal, cancellation, or termination of certain insurance policies; deleting certain provisions that require extended periods of prior notice with respect to the nonrenewal, cancellation, or termination of certain insurance policies; prohibiting the cancellation of certain policies that have been in effect for a specified amount of time except under certain circumstances; amending s. 627.7074, F.S.; revising notification requirements for participation in the neutral evaluation program; amending s. 627.736, F.S.; revising the period for applicability of certain Medicare fee schedules or payment limitations; amending s. 627.744, F.S.; revising preinsurance inspection requirements for private passenger motor vehicles; providing an effective date.

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

Section 1. Subsection (9) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation

policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. ~~627.4133(2)(b)5.b.~~ applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

Section 2. Paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 ~~100~~ days before the effective date of the nonrenewal, cancellation, or termination. ~~However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30.~~ The notice must include the reason for the nonrenewal,

cancellation, or termination, except that:

~~1. The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 days before the effective date of the nonrenewal, cancellation, or termination for a first-named insured whose residential structure has been insured by that insurer or an affiliated insurer for at least 5 years before the date of the written notice.~~

1.~~2.~~ If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for paying the premium on a policy or an installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under a premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the

applicant or 15 days after notice is sent to the applicant by certified mail or registered mail. If the contract is void, any premium received by the insurer from a third party must be refunded to that party in full.

2.~~3.~~ If cancellation or termination occurs during the first 90 days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or a failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement; a nonpayment of premium; a failure to comply, within 90 days after the date of effectuation of coverage, with underwriting requirements established by the insurer before the date of effectuation of coverage; or a substantial change in the risk covered by the policy or unless the cancellation is for all insureds under such policies for a given class of insureds. This subparagraph does not apply to individually rated risks that have a policy term of less than 90 days.

4. After a policy or contract has been in effect for more than 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public

records.

~~5. The requirement for providing written notice by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before the effective date of nonrenewal:~~

~~a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706.~~

5.~~b.~~ A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

~~After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, a substantial change in the risk covered by the policy, or the cancellation is for all insureds under such policies for a given class of~~

~~insureds. This paragraph does not apply to individually rated risks that have a policy term of less than 90 days.~~

6. Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

7. A policy covering both a home and a motor vehicle may be nonrenewed for any reason applicable to the property or motor vehicle insurance after providing 90 days' notice.

Section 3. Subsection (3) of section 627.7074, Florida Statutes, is amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(3) If there is coverage available under the policy and the claim was submitted within the timeframe provided in s. 627.706(5), following the receipt of the report provided under s. 627.7073 or the denial of a claim for a sinkhole loss, the

insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section. Neutral evaluation supersedes the alternative dispute resolution process under s. 627.7015 but does not invalidate the appraisal clause of the insurance policy. The insurer shall provide to the policyholder the consumer information pamphlet prepared by the department pursuant to subsection (1) electronically or by United States mail.

Section 4. Paragraph (a) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) A physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. However, such a charge may not exceed the amount

the person or institution customarily charges for like services or supplies. In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.

b. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.

c. For emergency services and care as defined by s. 395.002 provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III).

(II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.

(III) The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

2. For purposes of subparagraph 1., the applicable fee

schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the service year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies to services, supplies, or care rendered during ~~throughout the remainder of~~ that service year, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B. For purposes of this subparagraph, the term "service year" means the period from March 1 through the end of February of the following year.

3. Subparagraph 1. does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider is entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for

Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care if the coding policy or payment methodology does not constitute a utilization limit.

4. If an insurer limits payment as authorized by subparagraph 1., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount or maximum policy limits.

5. ~~Effective July 1, 2012,~~ An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph. A policy form approved by the office satisfies this requirement. If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.

Section 5. Paragraphs (a) and (b) of subsection (2) of section 627.744, Florida Statutes, are amended to read:

627.744 Required preinsurance inspection of private passenger motor vehicles.—

(2) This section does not apply:

(a) To a policy for a policyholder who has been insured for 2 years or longer, without interruption, under a private

passenger motor vehicle policy that ~~which~~ provides physical damage coverage for any vehicle~~,~~ if the agent of the insurer verifies the previous coverage.

(b) To a new, unused motor vehicle purchased or leased from a licensed motor vehicle dealer or leasing company.~~, if~~ The insurer may require ~~is provided with~~:

1. A bill of sale, ~~or~~ buyer's order, or lease agreement that ~~which~~ contains a full description of the motor vehicle~~,~~ ~~including all options and accessories~~; or

2. A copy of the title or registration that ~~which~~ establishes transfer of ownership from the dealer or leasing company to the customer and a copy of the window sticker ~~or the dealer invoice showing the itemized options and equipment and the total retail price of the vehicle~~.

For the purposes of this paragraph, the physical damage coverage on the motor vehicle may not be suspended during the term of the policy due to the applicant's failure to provide or the insurer's option not to require the ~~required~~ documents. However, if the insurer requires a document under this paragraph at the time the policy is issued, payment of a claim may be ~~is~~ conditioned upon the receipt by the insurer of the required documents, and no physical damage loss occurring after the effective date of the coverage may be ~~is~~ payable until the documents are provided to the insurer.

Section 6. This act shall take effect July 1, 2015.

PCS for CS/HB 233

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 233 Countersignature
SPONSOR(S): Regulatory Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Affairs Committee		Haston GH	Hamon K.W.H.

SUMMARY ANALYSIS

Under current law, a property, casualty, or surety insurance policy must contain a countersignature by a Florida-licensed agent. Subject to a few exceptions, the current law provides that insurance companies are not to assume direct liability for any property, casualty, or surety insurance policy unless it contains a proper countersignature.

Prior to 2003, the law required these insurance policies to be countersigned by a Florida-licensed agent who was also a Florida resident. This served the law's intended purpose of protecting the public by ensuring a local agent was present for policyholders who previously encountered difficulties dealing with out-of-state insurance companies. However, the distinction based solely on residency between Florida-licensed resident agents and Florida-licensed non-resident agents for purposes of countersignatures was deemed unconstitutional in 2003 by the United States District Court for the Northern District of Florida in *Council of Insurance Agents and Brokers v. Gallagher*. In response to this ruling, the legislature removed the agent's residency requirement from the countersignature law, maintaining the requirement that the policy be countersigned by a Florida-licensed agent.

Though property, casualty, and surety insurance policies are required by statute to contain countersignatures, this requirement can be waived by insurance companies when they accept payment under the policy. Thus, insurance companies can be bound by a contract of insurance in the absence of a countersignature. However, it is currently unclear whether policyholders can similarly be bound by a contract of insurance in the absence of a countersignature.

The bill provides that the absence of a countersignature does not affect the validity of the insurance policy. The bill clarifies that an omission from a third party to the contract (the Florida-licensed agent) does not impact the validity of the contract of insurance as between the insurance company and the policyholder. Despite this change, the bill does not remove the statutory requirement that insurance companies seek countersignatures for their property, casualty, and surety insurance policies. As such, insurance companies could still be subject to review and potential penalties from the Office of Insurance Regulation (OIR) for failure to comply with the countersignature requirement.

The bill also makes a grammatical change to the language of the countersignature statute.

This bill has no fiscal impact on the public sector. The bill may have an indeterminate impact on the private sector.

This bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Information on Countersignatures

A countersignature is a "signature attesting to the authenticity of a document already signed."[1] Subject to a few exceptions,[2] Florida law requires a countersignature by a Florida-licensed agent for any property, casualty, or surety insurance policies.[3]

In 2004, following a constitutional ruling on s. 624.425, F.S., the Florida Legislature removed a requirement in the statute that the countersigning agent be a Florida resident. Prior to this change, s. 624.425, F.S., required a countersignature by a Florida-licensed agent who was also a Florida resident. This distinction based solely on residency was overturned on constitutional grounds in *Council of Insurance Agents and Brokers v. Gallagher.*[4] In that decision, the United States District Court for the Northern District of Florida declared that s. 624.425, F.S., "violate[d] the Privileges and Immunities Clause and Equal Protection Clause of the United States Constitution to the extent that [it denied] to Florida-licensed nonresident insurance agents the same rights and privileges [afforded] to Florida-licensed resident agents."[5]

Shortly after the *Gallagher* decision, the Department of Financial Services (DFS) released an informational bulletin advising that as a result of the holding, "[p]roperty, casualty and surety policies written through Florida-licensed nonresident agents are no longer required by law to be countersigned by a Florida resident insurance agent. Policies must be signed by the insurer and by a properly licensed resident or nonresident agent."[6]

In 2004, the legislature amended s. 624.425, F.S., removing the language that required the countersigning agent to be a Florida resident, but maintaining the requirement that the policy be countersigned by a Florida-licensed agent.[7] This amendment marked the most recent change to s. 624.425, F.S.

The original purpose of the countersignature requirement was to "assure the presence of local agents to serve the needs of policyholders who had previously encountered difficulties in dealing with insurance companies headquartered out of state."[8] However, since the countersigning agent is no longer required to be a Florida resident, it is less clear whether this purpose is being served today.[9]

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[1] *See* Countersign, MERRIAM-WEBSTER DICTIONARY (11th ed. 2003), available at http://www.merriam-webster.com.

[2] Excepted from the countersignature requirement are: contracts of reinsurance, policies of insurance on the rolling stock of railroad companies doing a general freight and passenger business; United States Customs surety bonds that are issued by a corporate surety approved by the United States Department of Treasury and that name the United States as the beneficiary; policies of insurance issued by insurers whose agents represent only one company or group of companies under common ownership if a company within one group is transferring policies to another company within the same group and the agent of record remains the same; and policies of insurance issued by insurers whose agents represent, as to property, casualty, and surety insurance, only one company or group of companies under common ownership and for which the application has been lawfully submitted to the insurer. s. 624.426, F.S.

[3] s. 624.425, F.S.

[4] 287 F. Supp. 2d 1302, 1304 (N.D. Fla. 2003).

[5] *Id.* at 1313.

[6] DFS-03-004, "Policy Countersignature – To All Property, Casualty and Surety Insurers and General Lines Insurance Agents" (Nov. 12, 2003), http://www.myfloridacfo.com/Division/Agents/Industry/Bulletins-Memos/default.htm#.VMZuh2xOncs.

[7] *See* SB 2588 (2004).

[8] *Colonial Penn Communities, Inc. v. Crosley*, 443 So. 2d 1030, 1032 (Fla. 5th DCA 1983); *see also Wolfe v. Aetna Ins. Co.*, 463 So. 2d 997, 999 (Fla. 5th DCA 1983) (noting purpose of countersignature requirement was to "protect the public in purchasing insurance policies by requiring such policies to be issued by resident, licensed agents over whom the state can exercise control and thus prevent abuses.").

DFS is responsible for licensing and regulating insurance agents.[10] The agent's countersignature on the policy provides DFS with a responsible party to contact in the event of non-compliance or any other issues that may arise.[11] The countersignatures also establish that someone familiar with Florida insurance law has attested to the specific policy's validity.[12]

The Office of Insurance Regulation (OIR) is responsible for licensing and regulating insurance companies.[13] As often as it deems necessary, OIR conducts Market Conduct Examinations where it determines whether insurance companies are complying with Florida law.[14] One factor surveyed in these Market Conduct Examinations is whether insurance companies are complying with the countersignature requirement.[15]

Current Situation

Currently, Florida law provides that insurers are not to assume direct liability unless the insurance policy contains a proper countersignature.[16] The relevant portion of the statute reads as follows:

> Except as stated in s. 624.426, no authorized property, casualty, or surety insurer shall assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless the policy or contract of insurance is issued by or through, and is countersigned by, an agent who is regularly commissioned and licensed currently as an agent and appointed as an agent for the insurer under this code.[17]

Though the policy is statutorily required to be countersigned by a Florida-licensed agent, the countersignature requirement can be waived.[18] Currently, if an insurer collects payment on a policy that lacks a countersignature, the insurer has waived the countersignature requirement and cannot then raise as a defense to a claim the invalidity of the policy due to the absence of a countersignature.[19] Thus, an insurer can presently be bound by a contract of insurance in the absence of a countersignature.

However, it is currently unclear whether policyholders can be similarly bound by contracts of insurance in the absence of a countersignature. There are cases currently pending in which a defendant policyholder has raised an invalidity defense to policies that were not countersigned in response to an insurance company's breach of contract claim seeking collection from the policyholder.[20]

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[9] Information obtained through telephone conversation with FCCI Insurance Group, 1/28/2015 (notes on file with Insurance & Banking Subcommittee).
[10] s. 626.013, F.S.
[11] Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).
[12] Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).
[13] s. 20.121(3)(a)1., F.S.
[14] s. 624.3161, F.S.
[15] Rule 69O-142.011(11)(a)11, F.A.C.
[16] s. 624.425(1), F.S.
[17] s. 624.425(1), F.S.
[18] *See Wolfe v. Aetna Ins. Co.*, 463 So. 2d 997, 1000 (Fla. 5th DCA 1983) (holding that the absence of a countersignature on a policy of insurance "does not, as a matter of law, invalidate it, because the absence of a countersignature may be waived [by the insurer], and does not, in and of itself, control the effectiveness of the insurance."); *Meltsner v. Aetna Cas. & Sur. Co. of Hartford, Conn.*, 233 So. 2d 849, 850 (Fla. 3d DCA 1969) (noting that there can be a "waiver of the requirement that the insurance policy be countersigned by a local producing agent"); *see also* 30B Fla. Jur. 2d Insurance s. 1546 (2014).
[19] Information confirmed through telephone conversation with FCCI Insurance Group, 1/28/2015 (notes on file with Insurance & Banking Subcommittee).
[20] *See FCCI Ins. Co. v. Gulfwind Companies, LLC*, 2013 CC 003056 NC (Fla. Sarasota Cty. Ct.); *FCCI Ins. Co. v. Zareth Metal Framing, Inc.*, 2013 CA 002540 (Fla. Sarasota Cty. Ct.).

Effect of the Bill on Countersignatures

This bill affects property, casualty, and surety insurance policies that have not been countersigned, adding the following language to s. 624.425(1), F.S.: "However, the absence of a countersignature does not affect the validity of the policy or contract."

The bill would give insurance companies the same rights as policyholders to enforce an otherwise valid policy in the event the policy or contract lacks a countersignature. The contract of insurance is between the insurance company and the policyholder. Thus, the effect of this bill is such that the omission of a countersignature by a licensed agent – a third party to the insurance contract – would not impact the validity of the insurance policy as between the insurer and the policyholder.[21]

Under the proposed law, insurance companies would still be required to obtain countersignatures, despite the fact that the absence of a countersignature would not invalidate the policy.[22] Those insurance companies that do not obtain countersignatures on their policies would still be subject to review and possible penalties from OIR through Market Conduct Examinations.[23] Such penalties range from reprimands to fines to the suspension or revocation of an insurance license.[24]

This bill also does not relieve the agent of their obligation to countersign insurance policies.[25] Though DFS has the statutory authority to sanction agents,[26] it typically does not fine agents for failing to countersign policies.[27] DFS believes that agents have enough incentive to comply with the countersignature law through the possibility of commissions or additional face time with consumers.[28]

This bill also makes a grammatical change to the language of s. 624.425(1), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.425(1), F.S., relating to agent countersignature required, property, casualty, surety insurance.

Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[21] Information obtained through telephone conversation with FCCI Insurance Group, 1/28/2015 (notes on file with Insurance & Banking Subcommittee).
[22] Information confirmed through telephone conversation with FCCI Insurance Group, 1/28/15 (notes on file with Insurance & Banking Subcommittee); Information confirmed through e-mail communication with OIR, 1/29/15 (e-mail on file with Insurance & Banking Subcommittee).
[23] Rule 69O-142.011(11)(a)11, F.A.C.; Information confirmed through e-mail communication with OIR, 1/29/15 (e-mail on file with Insurance & Banking Subcommittee).
[24] Rule 69O-142.011, F.A.C.
[25] Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).
[26] s. 624.307, F.S.
[27] Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).
[28] Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Uncertain. To the extent that there may be less of an incentive for an insurance company to seek a countersignature, some Florida-licensed agents may no longer receive the economic or social benefit of being a counter-signatory. However, even though the lack of a countersignature would not affect the validity of the policy, insurers would still have to seek countersignatures in order to comply with the letter of the law.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2015, the Insurance & Banking Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment replaced the words "that may be insured" with the words "proper to insure" and the word "the" with the word "any," thereby reinstating current law. The amendment also corrected a scrivener's error by replacing "of" with "or."

The staff analysis is drafted to reflect the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to countersignature; amending s. 624.425, F.S.; providing that the absence of a countersignature does not affect the validity of a policy or contract; providing an effective date.

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

Section 1. Subsection (1) of section 624.425, Florida Statutes, is amended to read:

624.425 Agent countersignature required, property, casualty, surety insurance.—

(1) Except as stated in s. 624.426, no authorized property, casualty, or surety insurer shall assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless the policy or contract of insurance is issued by or through, and is countersigned by, an agent who is regularly commissioned and licensed currently as an agent and appointed as an agent for the insurer under this code. However, the absence of a countersignature does not affect the validity of the policy or contract. If two or more authorized insurers issue a single policy of insurance against legal liability for loss or damage to person or property caused by a ~~the~~ nuclear energy hazard, or a single policy insuring against loss or damage to property by radioactive contamination, whether or not also insuring against one or more other perils proper to

insure against in this state, such policy if otherwise lawful may be countersigned on behalf of all of the insurers by a licensed and appointed agent of any insurer appearing thereon. The producing agent shall receive on each policy or contract the full and usual commission allowed and paid by the insurer to its agents on business written or transacted by them for the insurer.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 301 Alcoholic Beverages
SPONSOR(S): Regulatory Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Affairs Committee		Brown-Blake	Hamon

SUMMARY ANALYSIS

The bill modifies the Beverage Law for alcohol manufacturers, distributors, and vendors in order to support changes in the industry while maintaining the three-tier system.

Electronic Benefits Transfer Program

Provides that EBT cards cannot be used to purchase alcoholic beverages.

Malt Beverage Manufacturer/Vendor Licensure Three-Tier Exceptions

Permits a manufacturer to obtain a vendor's license at six manufacturing premises; provides for the sale of malt beverages directly to consumers for on-premises and off-premises consumption with some limitations.

Deliveries of Alcoholic Beverages

A licensed vendor that wishes to transport alcoholic beverages from a distributor's premises no longer needs a vehicle permit for vehicles owned or leased by the vendor or a person disclosed on the vendor's license application.

Growlers

Specifies growlers to be containers of 32, 64, and 128 ounces; specifies packaging and labeling requirements and the licensees authorized to fill and sell growlers.

Malt Beverage Tastings

Permits manufacturers or distributors to pay for and conduct tasting of malt beverages on a vendor's licensed premises, subject to certain requirements.

Craft Distilleries

Permits craft distilleries to sell two of each branded product, three of one branded product and one additional branded product or up to four of one branded product in face-to-face transactions with consumers making the purchases for personal use.

The bill is expected to have a minimal fiscal impact on the Department of Business and Professional Regulation.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Beverage Law

Three-Tier System

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[1]

In general, Florida's Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tiered system, alcoholic beverage excise taxes are generally collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

The three-tiered system is deeply rooted in the concept of the perceived "tied house evil," in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[2] Activities between manufacturers, distributors, and vendors are extensively regulated and constitute the basis for Florida's "Tied House Evil" law. Among those regulations, s. 561.42, F.S., prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

The following are some limited exceptions to the three-tier regulatory system:

- A manufacturer of malt beverages may obtain a vendor's license for the sale of alcoholic beverages on property that includes a brewery and promotes tourism;[3]
- A vendor may obtain a manufacturer's license to manufacture malt beverages if the vendor brews malt beverages at a single location in an amount of no more than 10,000 kegs per year and sells the beverages to consumers for consumption on the premises or consumption on contiguous licensed premises owned by the vendor;[4]
- A licensed winery may obtain up to three vendor's licenses for the sale of alcoholic beverages on a property;[5]
- Individuals may bring small quantities of alcohol back from trips out-of-state without being held to distributor requirements.[6]

Electronic Benefits Transfer Program

Current Situation

Currently, the Florida Department of Children and Families (DCF) uses the electronic benefits transfer (EBT) cards to assist in the dissemination of the food assistance benefits and temporary cash

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[1] s. 561.02, F.S.
[2] Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board,* (June 2004), http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf .
[3] s. 561.221(2), F.S.
[4] s. 561.221(3), F.S.
[5] s. 561.221(1), F.S.
[6] s. 562.16, F.S.

assistance payments provided by federal and state government programs such as SNAP (Supplemental Nutrition Assistance Program) and TANF (Temporary Assistance for Needy Families).[7] The benefits are placed on an EBT card, which acts like a credit card with a set limit, and can be used for certain covered purchases.

Section 402.82(4), F.S., provides locations and activities for which the EBT card cannot be used. The EBT card cannot be used at "[a]n establishment licensed under the Beverage Law to sell distilled spirits as a vendor and restricted as to the types of products that can be sold under ss. 565.04 and 565.045, or in a bottle club as defined in s. 561.01."[8] Therefore the EBT card is not permitted to be used in package stores, where all alcoholic beverages, including distilled spirits are sold.[9] Additionally, the EBT card cannot be used at bars and restaurants that hold quota licenses pursuant to s. 565.02(1)(b)-(f), F.S., where alcoholic beverages including distilled spirits are sold.

Effect of the Bill

The bill expands the prohibition for the use of the EBT card by amending s. 402.82, F.S., to provide that EBT cards cannot be used to purchase an alcoholic beverage as defined in s. 561.01, F.S., and sold pursuant to the Beverage Law. This would include any alcoholic beverage sold pursuant to chs. 561, 562, 563, 564, 565, 567, and 568, F.S., including all wines, beers, and spirits.

Malt Beverage Manufacturer/Vendor Licensure Exceptions

Current Situation

There are a few exceptions to the three-tier regulatory system throughout the nation, where one of the three-tiers (manufacturer, distributor, or vendor) has some ownership or control interest in another tier. Two exceptions in Florida law are referred to as the "tourism exception" and the "brewpub exception."

Tourism Exception

The first exception is sometimes referred to as the Tourism Exception. In this exception, a manufacturer of malt beverages may obtain vendor's licenses for the sale of alcoholic beverages on property that includes a brewery and promotes tourism.

This exception first became law 1963, when s. 561.221, F.S., was amended to permit malt beverage manufacturers to hold one vendor's license.[10] The language was amended in 1967 to permit wine manufacturers to hold one vendor's license,[11] and again in 1978 to permit malt beverage and wine manufacturers to hold two vendor's licenses.[12] At the time, three manufacturers met the criteria to hold a vendor's license, but only one did.[13] The next amendment came 1979,[14] when the statute was amended to permit malt beverage and wine manufacturers to hold three vendor's licenses.

In 1984,[15] the current exception was adopted into law. Chapter 84-142, Laws of Florida amended s. 561.221, F.S., to remove malt beverage manufacturers from the provision permitting malt beverage and wine manufacturers to hold three vendor's licenses and created a new subsection permitting a malt beverage manufacturer to hold vendor's licenses on a property consisting of a single complex, including a brewery, which promotes the brewery and the tourism industry. These amendments

[7] s. 402.82(1), F.S.
[8] s. 402.82(4)(a), F.S.
[9] s. 565.04, F.S.
[10] ch. 63-11, Laws of Fla.
[11] ch. 67-511, Laws of Fla.
[12] ch. 78-187, Laws of Fla.
[13] *Senate Staff Analysis and Economic Impact Statement*, SB 758 (1978), May 2, 1978.
[14] ch. 79-54, Laws of Fla.
[15] ch. 84-142, Laws of Fla.

authorized a malt beverage manufacturer to have unlimited vendor's licenses on a property contiguous to a brewery.[16] At the time, only one manufacturer took advantage of the amendment, Anheuser Busch, at its Busch Gardens location in Tampa, Florida. This provision has not been amended since 1984.

This exception permits manufacturers to obtain vendor's licenses for the sale of malt beverages at a brewery location if the vendor's license will promote tourism.[17] As interpreted by the Division, this exception permits the restaurant or taproom attached to the manufacturing premises to sell alcoholic beverages subject to the following conditions:

- Malt beverages manufactured on premises or shipped from the manufacturer's other manufacturing premises may be sold for on-premises consumption;
- Malt beverages manufactured on premises or shipped from the manufacturer's other manufacturing premises may be sold for off-premises consumption in authorized containers, including growlers;
- Any other alcoholic beverages may be sold as authorized by the vendor's license.

In Florida, a number of breweries, known as "craft breweries,"[18] have used the exception to open restaurants or taprooms attached to their breweries in order to build their brand. Between 1995 and February 2014, 90 licenses have been issued in Florida to various entities pursuant to this exception, with 33 being issued in 2012 and 2013 alone.[19] Currently in Florida, approximately 60 breweries are licensed as both manufacturers and vendors pursuant to this exception.[20]

Since 1977, the brewery industry has grown nationwide exponentially, from 89 breweries nationwide in 1977 to 2,538 in June 2013.[21] During 2013, craft brewers saw an 18 percent rise in volume and a 20 percent increase by dollars compared to 15 percent rise in volume and 17 percent increase by dollars in 2012.[22]

Brewpub Exception

The second exception where an entity may obtain both a license as a manufacturer of malt beverages and a vendor's license for the sale of alcoholic beverages is often referred to as the Brewpub Exception. This exception was added to s. 561.221, F.S., by SB 1218 (1987),[23] which amended the language to permit a vendor to be licensed as a manufacturer of malt beverages at a single location, with the following requirements:

- The brewpub may not brew more than 10,000 kegs of malt beverages on the premises per year;
- Malt beverages manufactured on premises must be sold for on-premises consumption;
- Malt beverages brewed by other manufacturers, as well as wine or liquor may be sold for on-premises consumption as authorized by its vendor's license;

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[16] *Senate Staff Analysis and Economic Impact Statement*, SB 813 (1984), May 9, 1984 (CS/HB 183 was substituted for CS/SB 813).
[17] s. 561.221(2), F.S.
[18] The Brewers Association defines a "craft brewer" as a small, independent and traditional brewer, with an annual production of 6 million barrels of beer or less, less than 25% owned or controlled by an alcoholic beverage industry member that is not a craft brewery, and has a majority of its total beverage alcohol volume in beers whose flavor derives from traditional or innovative brewing ingredients and their fermentation. BREWERS ASSOCIATION, *Craft Brewer Defined*, http://www.brewersassociation.org/statistics/craft-brewer-defined/ (last visited Feb. 6, 2015).
[19] Email from Dan Olson, Deputy Director of Legislative Affairs, Department of Business and Professional Regulation, Re: CMB licenses with a vendor's license issued pursuant to s. 561.221(2), F.S., by year since 1995 (Feb. 4, 2014).
[20] *Id.*
[21] BREWERS ASSOCIATION, *Brewers Association Reports Continued Growth for U.S. Craft Brewers*, (July 29, 2013), http://www.brewersassociation.org/press-releases/brewers-association-reports-continued-growth-for-u-s-craft-brewers/.
[22] BREWERS ASSOCIATION, *Craft Brewing Facts*, http://old.brewersassociation.org/pages/business-tools/craft-brewing-statistics/facts (last visited on Feb. 6, 2015).
[23] ch. 87-63, Laws of Fla.

- The brewpub must keep records and pay excise taxes for the malt beverages it sells or gives to consumers.

Due to the requirement that malt beverages be sold for on-premises consumption, brewpubs are not permitted to sell growlers.

Overlap of Exceptions

The statutory language of the Tourism Exception addresses a manufacturer that wishes to hold a vendor's license to permit the sale of malt beverages directly to the public at a brewery. The statutory language of the Brewpub Exception addresses a vendor that wishes to hold a manufacturer's license to permit the brewing of malt beverages for consumption on premises at a retail location. Nevertheless, some "brewpubs" are licensed under the Tourism Exception. In some cases, these restaurants even use the word "brewpub" in the name of the business. At these manufacturers' locations, the public is able to purchase growlers. However a vendor licensed as a brewpub pursuant to the brewpub exception is not able to sell growlers to the public.

Additionally, the Division has permitted licensees originally licensed pursuant to the Brewpub Exception to change their licensure to a manufacturer with a vendor's license under the Tourism Exception. The law created limited exceptions to the three-tier system; however, as more recently implemented, the overlap between the tiers has become more pronounced.

Come to Rest Requirements

Section 561.5101, F.S., provides that, for purposes of inspection and tax-revenue control, all malt beverages except those brewed in brewpubs pursuant to s. 561.221(3), F.S., must come to rest at the licensed premises of a distributor prior to being sold to a vendor. The exception does not include s. 561.221(2), F.S., for beer brewed at a brewery and sold at retail on the manufacturer's premises under the Tourism Exception.

Effect of the Bill

Manufacturer with Vendor's License Exception

The bill permits manufacturers to obtain a vendor's license at six manufacturing premises licensed by the manufacturer, pursuant to the following requirements:

- The manufacturing premises and the vendor's retail premises must be located on the same property, which may be separated by one street or highway;
- The premises must contain a brewery;
- The manufacturer and the vendor retail premises must be included on a sketch provided to the Division at the time of application for licensure.

The manufacturer is permitted to sell alcoholic beverages to consumers pursuant to their vendor's license in face-to-face transactions subject to the following requirements:

- Malt beverages brewed at the licensed manufacturing premises or at another manufacturing premises owned by the manufacturer:
  - For on-premises consumption;
  - For off-premises consumption in authorized containers such as cans or bottles, limited to a maximum of 288 ounces, or two cases, per customer, per day;
  - For off-premises consumption in kegs;
  - For off-premises consumption in growlers.
- Malt beverages brewed by another manufacturer:
  - For on-premises consumption;

- For off-premises consumption in growlers.
- Wine or liquor for on-premises or off-premises consumption as authorized by the vendor's license.

The manufacturer maintains responsibility for maintaining records and paying excise taxes for the malt beverages it sells or gives to consumers pursuant to its vendor's license.

A manufacturer with vendor's licenses at other manufacturing premises may transfer beer to one of its licensed facilities from its other licensed facilities, but the total amount received by the receiving manufacturing facility shall not exceed the yearly production amount at the receiving facility.

Manufacturers that are connected may not hold vendor's licenses at more than 6 licensed manufacturing premises. Manufacturers are considered to be connected if they directly or indirectly control or are controlled by the other manufacturer, if either has any direct or indirect ownership interest in the other, or if another person or entity has ownership interest in both, or if both have a common officer, director, or manager, operate under the direction of common management, or control assets related to a business for which the malt beverage manufacturer license is issued. Ownership interest of less than 10 percent in the manufacturer, including the purchase of stock, does not constitute ownership interest sufficient to create a connection.

If a manufacturer intends to become connected with one or more manufacturers and, as a result, together they would hold more than 6 vendor's licenses, they must provide to the Division a detailed plan for divestment for the businesses for which the excess licenses have been issued, to be completed prior to the manufacturer becoming connected with the other manufacturers. The licenses maybe transferred to the purchasers of the business if the application of the purchasers is approved by the Division. Failure to comply will subject all connected manufacturers to disciplinary action.

Come to Rest Requirements

The bill exempts malt beverages brewed by a manufacturer with a vendor's license pursuant to s. 561.221(2) or (3), F.S., (Manufacturer with Vendor's License Exception and Brewpubs) from the requirement that all malt beverages come to rest at the licensed premises of a distributor prior to being sold to a vendor by the distributor.

Malt Beverage Tastings

Current Situation

As part of Florida's "Tied House Evil" laws, there are many restrictions to the business and market activities between the three-tiers. Restrictions include preventing shared promotions, where a manufacturer or distributor may partner with a vendor to promote a specific product at the vendor's location.

Manufacturers and distributors are prohibited from providing malt beverages for tastings at a vendor's licensed premises, as it would be a violation of the Tied-House Evil provisions of the Beverage Law. Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. Additionally, s. 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever.

Vendors are permitted to provide alcoholic beverages directly to consumers if the alcoholic beverages are paid for by the vendor. Therefore, vendors are currently permitted to conduct malt beverage tastings using malt beverages that the vendor owns.

Effect of the Bill

The bill deletes language in s. 561.42(14)(e), F.S., prohibiting manufacturers or distributors from conducting sampling of malt beverages on a vendor's licenses premises and makes some conforming changes to the subsection.

Additionally, s. 563.09, F.S., is created to permit a manufacturer, distributor, or importer of malt beverages, or any contracted third-party agent thereof to conduct malt beverages tastings at the following locations:

- The licensed premises of a vendor authorized to sell for consumption on premises;
- The licensed premises of a vendor authorized to sell in sealed containers for consumption off the premises if:
    - The vendor's licensed premises consists of at least 10,000 square feet or more interior space; or
    - The vendor is licensed pursuant to s. 565.02(1)(a), F.S.

The tastings may only be conducted as follows:

- Limited to and directed toward members of the general public of the age of legal consumption;
- If the vendor is licensed for on premises consumption, served in a cup, glass, or other open container; and,
- If the vendor is only licensed for off premises consumption, be provided to the consumer in a tasting cup with a capacity of 3.5 ounces or less.

The entity conducting the tasting may purchase the malt beverages from the vendor at no more than retail price.

The entity conducting the tastings shall:

- Provide the malt beverages used in the tasting;
- Not pay a fee or provide any compensation to the vendor;
- Properly dispose of any remaining beverages or return any unconsumed malt beverages to the manufacturer's or distributor's inventory;
- Complete any applicable reports and pay applicable excise taxes, even if the manufacturer or distributor contracts with a third-party agent to conduct the tasting.

More than one tasting may be held on a licensed premises each day, but only one tasting event may be conducted at any one time.

The bill does not alter a vendor's rights to conduct tastings under the current law, and is supplemental to any special act or ordinance. The bill provides rulemaking authority for the division to adopt rules to implement the tastings provision.

Deliveries of Alcoholic Beverages

Current Situation

A license vendor is permitted to transport alcoholic beverage purchased directly from a distributor's place of business to the vendor's licensed premises or off-premises storage, so long as the vendor or any person disclosed on the application owns or leases the vehicle used for transport and that the

vehicle was disclosed to the Division and a permit is issued for the vehicle. The person whose name is included in the permit application must be the person that operates the vehicle during transport.[24]

In order to obtain a vehicle permit for the transport of alcoholic beverages, the licensee must submit an application with a $5 fee per vehicle to the Division. Permits do not expire unless the licensee disposes of the vehicle, the vendor's license is transferred, canceled, or not renewed, or is revoked. The vendor may request that a permit be canceled.[25]

By accepting a vehicle permit, the vendor or person disclosed on the application agrees the vehicle is subject to inspection and search without a search warrant, to ensure the vendor is complying with the Beverage Law. The inspection may be completed by authorized Division employees, sheriffs, deputy sheriffs, and police officers during business hours or when the vehicle is being used to transport alcoholic beverages. The vehicle permit and invoice or sales ticket for the alcoholic beverage in the vehicle must be carried in the vehicle while the vehicle is being used to transport alcoholic beverages.

Pursuant to s. 562.07, F.S., alcoholic beverages cannot be transported in quantities of more than 12 bottles except by:

- Common Carriers;
- In owned or leased vehicles of licensed vendors or authorized persons transporting the alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage if the vehicle has the required permit;
- Individuals who possess the beverages not for resale;
- Licensed manufacturers, distributors, or vendors delivery of alcoholic beverages away from their place of business in vehicles owned or leased by the licensees; or
- A vendor, distributor, pool buying agent, or salesperson of wine and spirits as outlined in s. 561.57(5), F.S.

Effect of the Bill

The bill amends s. 561.57(3) and (4), F.S., to allow a licensed vendor to transport alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage permitted by the Division without a vehicle permit if the vehicle is owned or leased by the vendor or any person who has been disclosed on the license application.

Additionally, the bill permits the following deliveries of alcoholic beverages without requiring a permit for the vehicle used to conduct the transporting:

- Deliveries by licensees from permitted storage areas;
- Deliveries by a distributor from the manufacturer to his or her licensed premises;
- Transporting pool purchases to the licenses premises of the members of a pool buying agent with the licensee's owned or leased vehicles;
- Deliveries of alcoholic beverages in the vehicle of a licensed sales person of wine and spirits on behalf of the distributor.

The bill removes the requirement of a vendor possess an invoice or sales ticket during the transportation of alcoholic beverages.

Finally, the bill amends s. 562.07, F.S., by amending entities and individuals that can transport alcoholic beverages in quantities of more than 12 bottles to include:

- Common carriers;

[24] s. 561.57(3), F.S.
[25] s. 561.57(4), F.S.

- Vendors or persons authorized in s. 561.57(3), F.S., in the vendor's or authorized person's owned or leased vehicle, transporting alcoholic beverages from the distributor's place of business to the vendor's licensed premises or off-premises storage;
- Individuals who possess the beverages not for resale;
- Licensed manufacturers, distributors, or vendors transporting alcoholic beverages pursuant to s. 561.57, F.S.

Container Sizes and Growlers

Current Situation

Standard Containers

Currently, s. 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors be packaged in individual containers of no more than 32 ounces. However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverages regardless of individual container type. The industry developed bottles, cans, kegs, and other containers, as well as the shipping equipment to protect and distribute bottles, cans, and kegs based on industry standard sizes. Distributors have created a nationwide distribution system with the capacity to transport industry standard sized containers.[26]

Growlers

Some states permit vendors to sell malt beverages in containers known as growlers, which typically are reusable containers of 32 or 64 ounces that the consumer can take to a manufacturer/vendor to be filled with malt beverage for consumption off the licensed premises.[27] The standard size for a growler is 64 ounces.[28] Florida malt beverage law does not specifically address growlers.

Florida malt beverage law does not permit the use of 64 ounce containers or any other container size between 32 ounces and one gallon. As a result, growlers are prohibited in any sizes other than 32 ounces or less, and one gallon.

Effect of the Bill

Container Size

The bill differentiates between "authorized containers" such as cans and bottles described in s. 563.06(6), F.S., and "growlers" as described in s. 563.06(7), F.S.

Growlers

Subsection 563.06(7), F.S., is created to describe growlers, set requirements for growlers, and indicate license types authorized to fill growlers. The new container sizes authorized for use as growlers are limited to use as specified and may not be used for purposes of distribution or sale outside the manufacturer's or vendor's licensed premises.

The bill defines growlers as a container of 32, 64, and 128 ounces in volume. A growler may be filled or refilled by the following licensees:

- A manufacturer that holds a valid vendor's license pursuant to s. 561.221(2), F.S.;

[26] Testimony, Workshop on Craft Brewers Business Development Regulatory Issues, Business & Professional Regulation Subcommittee (Jan. 9, 2013).
[27] BeerAdvocate, *The Growler: Beer-To-Go!*,(July 31, 2002) http://www.beeradvocate.com/articles/384/.
[28] Brew-Tek, *What is a Growler?*, http://www.brew-tek.com/products/growlers/what-is-a-growler/ (last visited Feb. 6, 2015).

- Any vendor that holds a valid quota license pursuant to ss. 561.20(1) and 565.20(1)(a)-(f), F.S.;
- Any vendor holding a license under s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), unless such license restricts the sale of malt beverages to sale for consumption only on the premises of such vendor.

Growlers must meet the following requirements:

- Have an unbroken seal or be incapable of being immediately consumed;
- Include an imprint or label that provides:
    - Name of the manufacturer
    - Brand
    - Percentage of alcohol by volume

The bill provides for the above requirements to be indicated using an imprint or other form of a label attached to the growler. The bill provides that it is legal to possess and transport full or empty growler containers.

Craft Distilleries

Current Situation

In 2013, s. 565.03, F.S., was amended to create another exception to the three-tier regulatory system regarding the manufacture and sale of distilled spirits. "Distillery" is defined as "a manufacturer of distilled spirits." "Craft distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises and notifies the Division of the desire to operate as a craft distillery. A craft distillery is permitted to sell the distilled spirits it produces to consumers for off-premise consumption. Sales of the spirits must be made on "private property" contiguous to the distillery premises at a souvenir gift shop operated by the distillery. Once a craft distillery's production limitations have been surpassed (75,000 gallons), the craft distillery is required to notify the Division within five days and immediately cease sales to consumers.

The 2013 amendment prohibits craft distilleries from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and caps the total sales to each consumer at two or less containers per customer per calendar year. In addition, the craft distilleries are prohibited from shipping their distilled spirits to consumers.

The United States Department of Treasury houses the Alcohol and Tobacco Tax and Trade Bureau (TTB), which sets forth labeling and brand registration requirements for alcoholic beverages sold in the United States. Distillers are not permitted to sell, ship, or deliver for sale or shipment or otherwise introduce into interstate or foreign commerce any distilled spirits in bottles unless the bottles are marked, branded, labeled, or packaged in conformity with ss. 27 C.F.R. 5.31 through 27 C.F.R. 5.42. Those sections set forth what distillers are required to place on the labels, including manufacturer name, brand name, alcohol content, net contents, class and type of alcohol, and other labeling requirements. Distilled spirits and their labels are required to be "approved" by the TTB prior to being bottled or removed from the manufacturing site. When the TTB approves the distilled spirit, they provide a Certificate of Label Approval, which includes a copy of the brand name as provided on the application for approval.

Alcoholic beverages cannot be sold or offered for sale in Florida, or moved within or into Florida without the brand/label first being registered with the Division. A brand or label, as referred to in ch. 565, F.S., is a liquor product that is uniquely identified by label registered according to state and federal law.

Currently, the Department of Transportation implements the Florida Highway Guide Sign Program, which provides for a system of guide signing used to inform and guide motorists to needed signed

facilities, improve traffic around intersections near destinations, and establish criteria for the erection of guide signs. Pursuant to Rule 14-51.020(3)(g), F.A.C., Certified Florida Farm Wineries are "eligible for signing pursuant to s. 599.004, F.S." The wineries for which these signs are erected pay for the associated costs based on a fee associated with the signing.

Effect of the Bill

The bill defines the term "branded product" to mean "any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or regulations." The bill provides that a craft distillery may sell spirits distilled on its premises to consumers at its souvenir gift shop, and expands the limit on direct sales to consumers from two individual containers per person, per calendar year, to no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and one individual container of a second branded product; or
- Four individual containers of one branded product.

Each container sold in face-to-face transactions with consumers must comply with the container limits in s. 565.10, F.S., per calendar year, for the consumer's personal use and not for resale.

The bill clarifies that a craft distillery may not ship or arrange to ship any of its distilled spirits to consumers and may only sell and deliver to consumers within the state in a face-to-face transaction at the distillery property.

Additionally, the bill provides that the Department of Transportation shall install directional signs for a craft distillery on the rights-of-way of interstate highways and primary and secondary roads if a craft distillery requests for the signs to be posted. The craft distillery is responsible for paying all costs associated with placing the sign it requested.

Finally, the bill clarifies that a craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

B. SECTION DIRECTORY:

Section 1 amends s. 402.82, F.S., prohibiting electronic benefits transfer cards from being used or accepted to purchase an alcoholic beverage.

Section 2 amends s. 561.221, F.S., modifying an exception to the three-tier system.

Section 3 amends s. 561.32, F.S., providing procedures for manufacturers to comply with statutory maximum vendor's license requirements.

Section 4 amends s. 561.42, F.S., deleting a prohibition against certain entities conducting malt beverage tastings; conforming provisions.

Section 5 amends s. 561.5101, F.S., conforming a cross-reference.

Section 6 amends s. 561.57, F.S., deleting permit requirements on the vehicles that are owned or leased by a vendor, for the vendor to transport alcoholic beverages.

Section 7 amends s. 562.07, F.S., conforming provisions.

Section 8 amends s. 562.34, F.S., providing that possessing and transporting a growler is lawful.

Section 9 amends s. 563.06, F.S., conforming provisions and providing requirements for growlers.

Section 10 creates s. 563.09, F.S., authorizing a licensed distributor or manufacturer of malt beverages to conduct a malt beverage tasting and providing requirements and limitations.

Section 11 amends s. 565.03, F.S., modifying restrictions on the sale of individual containers to consumers in a face-to-face transaction at a craft brewery.

Section 12 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Vehicle Permits:
   According to the Department, the elimination of the required permit and associated fee will result in a small reduction in revenue collections. The fee is a one-time fee, not an annual fee. In FY 2013-14 total fees collected for vehicle permits were $675.

2. Expenditures:

   There does not appear to be a decrease or increase in expenditures to the state government. Monitoring of compliance by the state government is complaint driven. The Division can likely handle any increase in complaints with existing staff and equipment.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   There does not appear to be a decrease or increase in revenues to local governments.

2. Expenditures:

   There does not appear to be a decrease or increase in expenditures to local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Growlers:
The bill may help generate additional revenue by authorizing certain licensees to fill and sell the 64 ounce size growler.

Craft Distillers:
The bill may cause a minor increase in costs for craft distillers by requiring more complex record keeping, as they will be required to track purchases to consumers to ensure that no consumer purchases more than the permitted amount of branded product per calendar year. This cost will likely be offset by the increased revenue due to an increase in sales of distilled spirits directly to consumers.

D. FISCAL COMMENTS:

Craft Distilleries:
The bill provides that the Department of Transportation shall install directional signs for a craft distillery on the rights-of-way of interstate highways and primary and secondary roads if a craft distillery requests for the signs to be posted. The Department of Transportation may incur initial costs for the installation of the signs. However, the craft distillery is responsible for paying all costs associated with placing the sign it requested.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Division will likely need to amend applications for licensure, requiring the rule adopting the form to undergo the rulemaking process. Otherwise, there is no mandatory rulemaking or rulemaking authority in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to alcoholic beverages; amending s. 402.82, F.S.; conforming provisions; prohibiting electronic benefits transfer cards from being used or accepted to purchase an alcoholic beverage; amending s. 561.221, F.S.; providing requirements for a licensed manufacturer of malt beverages to sell such beverages directly to consumers; providing requirements for a licensed manufacturer to obtain a vendor's license; specifying circumstances under which a manufacturer may sell alcoholic beverages under its vendor's license; requiring a manufacturer to complete certain reports; providing applicability; amending s. 561.32, F.S.; providing procedures for manufacturers to comply with statutory maximum vendor's license requirements; amending s. 561.42, F.S.; deleting a prohibition against certain entities conducting tastings; revising requirements for promotional displays and advertising; amending s. 561.5101, F.S.; conforming a cross-reference; amending s. 561.57, F.S.; revising restrictions on the vehicle required for use by a vendor who transports alcoholic beverages; modifying provisions related to vehicle permits for vendors; amending s. 562.07, F.S.; conforming provisions; amending s. 562.34, F.S.; providing that possessing and transporting a growler

is lawful; amending s. 563.06, F.S.; conforming provisions; providing for a malt beverage container defined as a growler; providing requirements for growlers; creating s. 563.09, F.S.; authorizing a licensed manufacturer, distributor, or importer of malt beverages to conduct a malt beverage tasting; providing requirements and limitations; amending s. 565.03, F.S.; defining the term "branded product"; revising the limitation on the number of containers that may be sold to consumers by craft distilleries; applying such limitation to individual containers for each branded product; prohibiting a craft distillery from shipping or arranging to ship any of its distilled spirits to consumers; limiting the sale and delivery of distilled spirits; revising a restriction on certain craft distillery ownership; requiring the Department of Transportation to install certain directional signs at specified locations upon the request of a craft distillery licensed in this state; requiring the requesting craft distillery to pay specified costs; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 402.82, Florida Statutes, is amended to read:

402.82 Electronic benefits transfer program.—

(4) Use or acceptance of an electronic benefits transfer card is prohibited at the following locations or for the following activities:

(a) The purchase of an alcoholic beverage as defined in s. 561.01 and sold pursuant to the Beverage Law ~~An establishment licensed under the Beverage Law to sell distilled spirits as a vendor and restricted as to the types of products that can be sold under ss. 565.04 and 565.045 or a bottle club as defined in s. 561.01~~.

Section 2. Subsection (2) of section 561.221, Florida Statutes, is amended to read:

561.221 Retail exceptions to manufacturing licenses; brewing exceptions to vendor licenses ~~Licensing of manufacturers and distributors as vendors and of vendors as manufacturers~~; conditions and limitations.—

(2) On or after July 1, 2015, the division may ~~is authorized to~~ issue one vendor's license ~~licenses~~ to a manufacturer of malt beverages at no more than six licensed manufacturing premises for which the manufacturer has an interest, directly or indirectly, in the license. The manufacturer must meet the following requirements:

(a) The transactions must be face-to-face transactions, which, notwithstanding s. 561.57(1), requires the physical presence of the consumer to make payment for and take receipt of the beverages on the licensed manufacturing premises.

(b) The vendor's license must be located on the licensed manufacturing premises consisting of a single complex that includes a brewery. Such premises may be divided by no more than one public street or highway. The licensed vendor premises shall be included on the sketch or diagram defining the licensed premises submitted with the manufacturer's license application pursuant to s. 561.01(11). All sketch or diagram revisions by the manufacturer must be approved by the division, verifying that the vendor premises operated by the licensed manufacturer is owned or leased by the manufacturer and is located on the licensed manufacturing premises.

(c) The manufacturer may sell alcoholic beverages under its vendor's license as follows:

1. Malt beverages manufactured on the licensed manufacturing premises or at another licensed manufacturing premises for which the manufacturer has an interest, directly or indirectly, in the license for:

a. On-premises consumption.

b. Off-premises consumption in authorized containers pursuant to s. 563.06(6), limited to 288 ounces of malt beverages per customer per day;

c. Off-premises consumption in kegs;

d. Off-premises consumption in growlers pursuant to s. 563.06(7).

2. Malt beverages manufactured exclusively by other manufacturers for:

a. On-premises consumption.

b. Off-premises consumption in growlers pursuant to s. 563.06(7).

3. Any wine or liquor for on-premises or off-premises consumption as authorized under its vendor's license.

(d) A manufacturer of malt beverages licensed pursuant to this subsection is responsible for paying applicable excise taxes to the division and submitting applicable reports pursuant to ss. 561.50 and 561.55 with respect to the amount of malt beverages manufactured and sold pursuant to its vendor's license or given to consumers.

(e) This subsection does not preclude a licensed manufacturer of malt beverages with a vendor's license from holding a permanent public food service establishment license under chapter 509 on the licensed manufacturing premises.

(f) Notwithstanding any other provision of the Beverage Law, a manufacturer holding multiple manufacturing licenses may transfer malt beverages to a licensed facility, as provided in s. 563.022(14)(d), in an amount up to the yearly production amount at the receiving facility.

(g) A manufacturer or a group of manufacturers that are connected may not hold vendor's licenses under this subsection at more than six licensed manufacturing premises total or combined, and a separate vendor's license is required for each manufacturing premises. For purposes of this subsection, a manufacturer is considered connected to another manufacturer if

it directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the other manufacturer. A manufacturer is also considered connected to another manufacturer if either has any direct or indirect ownership interest in the other or another person or entity has any direct or indirect ownership interest in both or if both have any common officer, director, or manager, operate under the direction of common management, or control any assets related to a business for which a malt beverage manufacturer license is issued. However, any ownership interest of less than 10 percent in a manufacturer, including the purchase of stock, does not constitute an ownership interest sufficient to create a connection to that manufacturer under this subsection~~, even if such manufacturer is also licensed as a distributor, for the sale of alcoholic beverages on property consisting of a single complex, which property shall include a brewery and such other structures which promote the brewery and the tourist industry of the state. However, such property may be divided by no more than one public street or highway~~.

Section 3. Paragraph (c) is added to subsection (1) of section 561.32, Florida Statutes, to read:

561.32 Transfer of licenses; change of officers or directors; transfer of interest.—

(1) Licenses issued under the provisions of the Beverage Law shall not be transferable except as follows:

(c) Prior to a manufacturer becoming connected with one or

more other manufacturers as described in s. 561.221(2)(g), which would result in the connected manufacturers together holding a number of vendor's licenses in excess of the maximum combined number allowed pursuant to s. 561.221(2), the manufacturers must submit a detailed plan for divestment of the businesses for which the excess licenses have been issued, and have the divestment of excess licenses completed at the time of the connections. The manufacturers may obtain a transfer of the excess licenses to the purchasers of the businesses, provided the application of the purchaser is approved by the division in accordance with the same procedure provided for in ss. 561.17, 561.18, 561.19, ad 561.65. Failure to comply shall subject all connected manufacturers to disciplinary action.

Section 4. Subsection (14) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(14) The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or

registrants, or any ~~broker,~~ sales agent~~,~~ or sales person thereof; however:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter.

(c) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items may ~~shall~~ be sold only at a price not less than the actual cost to the industry member who initially purchased them, and ~~but~~ may be sold without limitation in total value of such items sold to a

vendor.

(d) A manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any ~~broker,~~ sales agent~~,~~ or sales person thereof, may provide consumer advertising specialties described in paragraph (c) to consumers on any vendor's licensed premises.

~~(e) Manufacturers, distributors, importers, brand owners, or brand registrants of beer, and any broker, sales agent, or sales person thereof, shall not conduct any sampling activities that include tasting of their product at a vendor's premises licensed for off-premises sales only.~~

(e)~~(f)~~ A manufacturer ~~Manufacturers~~, distributor ~~distributors~~, importer ~~importers~~, brand owner ~~owners~~, or brand registrant ~~registrants~~ of malt beverages ~~beer~~, and any ~~broker,~~ sales agent~~,~~ or sales person thereof or contracted third-party, may ~~shall~~ not engage in cooperative advertising with a vendor and may not name a vendor in any advertising for a malt beverage tasting authorized under s. 563.09 ~~vendors~~.

(f)~~(g)~~ A distributor ~~Distributors~~ of malt beverages ~~beer~~ may sell to a vendor ~~vendors~~ draft equipment and tapping accessories at a price not less than the cost to the industry member who initially purchased them, except there is no required charge, and the ~~a~~ distributor may exchange any parts that ~~which~~ are not compatible with a competitor's system and are necessary to dispense the distributor's brands. A distributor of malt beverages ~~beer~~ may furnish to a vendor at no charge replacement

parts of nominal intrinsic value, including, but not limited to, washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers.

Section 5. Subsection (1) of section 561.5101, Florida Statutes, is amended to read:

561.5101 Come-to-rest requirement; exceptions; penalties.—

(1) For purposes of inspection and tax-revenue control, all malt beverages, except those manufactured and sold by the same licensee, pursuant to s. 561.221(2) or (3) ~~s. 561.221(3)~~, must come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The prohibition contained in this subsection does not apply to the shipment of malt beverages commonly known as private labels. The prohibition contained in this subsection shall not prevent a manufacturer from shipping malt beverages for storage at a bonded warehouse facility, provided that such malt beverages are distributed as provided in this subsection or to an out-of-state entity.

Section 6. Subsections (3), (4), (5), and (6) of section 561.57, Florida Statutes, are amended to read:

561.57 Deliveries by licensees.—

(3) A licensed vendor may transport alcoholic beverage purchases from a distributor's place of business to the vendor's licensed premises or off-premises storage, if the vehicle used to transport the alcoholic beverages is owned or leased by the vendor or any person who has been disclosed on a license

application filed by the vendor and approved by the division ~~and a valid vehicle permit has been issued for such vehicle~~. A vehicle owned or leased by a person disclosed on a license application filed by the vendor and approved by the division under this subsection must be operated by such person when transporting alcoholic beverage purchases from a distributor's place of business to the vendor's licensed premises or off-premises storage.

~~(4) A vehicle permit may be obtained by a licensed vendor or any person authorized in subsection (3) upon application and payment of a fee of $5 per vehicle to the division. The signature of the person authorized in subsection (3) must be included on the vehicle permit application. Such permit remains valid and does not expire unless the vendor or any person authorized in subsection (3) disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division, whichever occurs first. The division shall cancel a vehicle permit issued to a vendor upon request from the vendor. The division shall cancel a vehicle permit issued to any person authorized in subsection (3) upon request from that person or the vendor. By acceptance of a vehicle permit, the vendor or any person authorized in subsection (3) agrees that such vehicle is always subject to inspection and search without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the~~

~~division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times that the vehicle is being used to transport or deliver alcoholic beverages. A vehicle permit issued under this subsection and invoices or sales tickets for alcoholic beverages purchased and transported must be carried in the vehicle used by the vendor or any person authorized in subsection (3) when the vendor's alcoholic beverages are being transported or delivered.~~

(4)~~(5)~~ Nothing contained in this section shall prohibit deliveries by the licensee from his or her permitted storage area or deliveries by a distributor from the manufacturer to his or her licensed premises; nor shall a pool buying agent be prohibited from transporting pool purchases to the licensed premises of his or her members with the licensee's owned or leased vehicles, and in such cases, ~~no vehicle permit shall be required in the transporting of such alcoholic beverages~~. In addition, a licensed salesperson of wine and spirits is authorized to deliver alcoholic beverages in his or her vehicle on behalf of the distributor ~~without having to obtain a vehicle permit~~.

~~(6) Common carriers are not required to have vehicle permits to transport alcoholic beverages.~~

Section 7. Subsections (2), (3), (4), and (5) of section 562.07, Florida Statutes, are amended to read:

562.07 Illegal transportation of beverages.—It is unlawful for alcoholic beverages to be transported in quantities of more

than 12 bottles except as follows:

(2) In the owned or leased vehicles of licensed vendors or any persons authorized in s. 561.57(3) transporting alcoholic beverage purchases from the distributor's place of business to the vendor's licensed place of business or off-premises storage ~~and to which said vehicles are carrying a permit and invoices or sales tickets~~ for alcoholic beverages purchased and transported as provided for in the alcoholic beverage law;

(3) By individuals who possess such beverages not for resale within the state;

(4) By licensed manufacturers, distributors, or vendors transporting ~~delivering~~ alcoholic beverages pursuant to s. 561.57 ~~away from their place of business in vehicles which are owned or leased by such licensees~~; and

(5) By a vendor, distributor, pool buying agent, or salesperson of wine and spirits as outlined in s. 561.57(4) ~~s. 561.57(5)~~.

Section 8. Subsections (6) of section 562.34, Florida Statutes, is created to read:

562.34 Containers; seizure and forfeiture.—

(6) Notwithstanding the provisions of this section, it shall not be unlawful for any person to have in her or his possession, custody, or control a growler as described in s. 563.06(7), either full or empty, or to transport such growler.

Section 9. Subsections (1) and (6) of section 563.06, Florida Statutes, are amended to read:

563.06 Malt beverages; imprint on individual container; size of containers; exemptions.—

(1) ~~On and after October 1, 1959,~~ All taxable malt beverages packaged in individual containers possessed by any person in the state for the purpose of sale or resale in the state, except operators of railroads, sleeping cars, steamships, buses, and airplanes engaged in interstate commerce and licensed under this section, shall have imprinted thereon in clearly legible fashion by any permanent method the word "Florida" or "FL" and no other state name or abbreviation of any state name in not less than 8-point type. The word "Florida" or "FL" shall appear first or last, if imprinted in conjunction with any manufacturer's code. A facsimile of the imprinting and its location as it will appear on the individual container shall be submitted to the division for approval.

(6) With the exception of growlers as described in subsection (7), all malt beverages packaged in individual containers sold or offered for sale by vendors at retail in this state shall be in individual containers containing no more than 32 ounces of such malt beverages; ~~provided,~~ however, ~~that~~ nothing contained in this section shall affect malt beverages packaged in bulk, ~~or~~ in kegs, or in barrels or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

(7) Notwithstanding any other provision of the Beverage Law, a malt beverage may be packaged in a growler, which is an

individual container that holds 32, 64, or 128 ounces of such malt beverage if it is filled at the point of sale.

(a) A growler may be filled or refilled by any of the following:

1. A licensed manufacturer of malt beverages holding a vendor's license under s. 561.221(2).

2. A vendor holding a quota license under s. 561.20(1) or s. 565.02(1)(a) that authorizes the sale of malt beverages.

3. A vendor holding a license under s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), unless such license restricts the sale of malt beverages to sale for consumption only on the premises of such vendor.

(b) A growler must include an imprint or label that provides information specifying the name of the manufacturer, the brand, and the percentage of alcohol by volume of the malt beverage. The container must have an unbroken seal or be incapable of being immediately consumed.

(c) A licensee authorized to fill or refill growlers may not use growlers for the purposes of distribution or sale outside of the licensed manufacturing premises or licensed vendor premises.

(d) A person, firm, or corporation, including its agents, officers, or employees, which violates subsection (7) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and the license held by the person, firm, or corporation, if any, is subject to revocation or suspension

by the division. A person, firm, or corporation, including its agents, officers, or employees, which violates paragraph (b), may be subject to a fine by the division of up to $250.

Section 10. Section 563.09, Florida Statutes, is created to read:

563.09 Malt beverage tastings by distributors and manufacturers.—

(1) A manufacturer, distributor, or importer of malt beverages, or any contracted third-party agent thereof, may conduct sampling activities that include the tasting of malt beverage products on:

(a) The licensed premises of a vendor authorized to sell alcoholic beverages by the drink for consumption on premises; or

(b) The licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises if:

1. The licensed premises is at an establishment with at least 10,000 square feet of interior floor space exclusive of storage space not open to the general public; or

2. The licensed premises is a package store licensed under s. 565.02(1)(a).

(2) A malt beverage tasting conducted under this section must be limited to and directed toward the general public of the age of legal consumption.

(3) For a malt beverage tasting conducted under this section on the licensed premises of a vendor authorized to sell

alcoholic beverages for consumption on premises, each serving of a malt beverage to be tasted must be provided to the consumer by the drink in a tasting cup, glass, or other open container and may not be provided by the package in an unopened can or bottle or in any other sealed container.

(4) For a malt beverage tasting conducted under this section on the licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises, the tasting must be conducted in the interior of the building constituting the vendor's licensed premises and each serving of a malt beverage to be tasted must be provided to the consumer in a tasting cup having a capacity of 3.5 ounces or less.

(5) A manufacturer, distributor, or importer, or any contracted third-party agent thereof, may not pay a vendor, and a vendor may not accept, a fee or compensation of any kind, including the provision of a malt beverage at no cost or at a reduced cost, to authorize the conduct of a malt beverage tasting under this section.

(6)(a) A manufacturer, distributor, or importer, or any contracted third-party agent thereof, conducting a malt beverage tasting under this section, must provide all of the beverages to be tasted; must have paid all excise taxes on those beverages which are required of the manufacturer or distributor; and must return to the manufacturer's or distributor's inventory all of the malt beverages provided for the tasting that remain

unconsumed after the tasting. More than one tasting may be held on the licensed premises each day, but only one manufacturer, distributor, importer, or contracted third-party agent thereof, may conduct a tasting on the premises at any one time.

(b) This subsection does not preclude a manufacturer, distributor, or importer, or any contracted third-party agent thereof, from buying the malt beverages that it provides for the tasting from a vendor at no more than the retail price, but all of the malt beverages so purchased and provided for the tasting which remain unconsumed after the tasting must be removed from the premises of the tasting and properly disposed of.

(7) A manufacturer, distributor, or importer of malt beverages that contracts with a third-party agent to conduct a malt beverage tasting under this section on its behalf is responsible for any violation of this section by such agent.

(8) This section does not preclude a vendor from conducting a malt beverage tasting on its licensed premises using malt beverages from its own inventory.

(9) This section is supplemental to and does not supersede any special act or ordinance.

(10) The division may, pursuant to ss. 561.08 and 561.11, adopt rules to implement, administer, and enforce this section.

Section 11. Paragraphs (a) and (b) of subsection (1) of section 565.03, Florida Statutes, are redesignated as paragraphs (b) and (c), respectively, a new paragraph (a) is added to that subsection, paragraph (c) of subsection (2) is amended, and

subsection (7) is added to that section, to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; craft distilleries.—

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

(a) "Branded product" means any distilled spirits product manufactured on site which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.

(2)

(c) A craft distillery licensed under this section may sell to consumers, at its souvenir gift shop, branded products ~~spirits~~ distilled on its premises in this state in factory-sealed containers that are filled at the distillery for off-premises consumption. Such sales are authorized only on private property contiguous to the licensed distillery premises in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state.

1. A craft distillery ~~or licensed distillery~~ may not sell any factory-sealed individual containers of spirits except in face-to-face sales transactions with consumers who are making a

purchase, per calendar year, of no more than:

a. Two individual containers of each branded product;

b. Three individual containers of a single branded product and one individual container of a second branded product; or

c. Four individual containers of a single branded product.

2. Each container must:

a. Be sold in face-to-face transactions with the consumer at the distillery's licensed premises in this state;

b. Comply with the container limits in s. 565.10;

c. Be purchased for the consumer's personal use and not for resale ~~two or fewer individual containers, that comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state~~.

3.~~1.~~ A craft distillery must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(b)~~(1)(a)~~. Any retail sales to consumers at the craft distillery's licensed premises are prohibited beginning the day after it reaches the production limitation.

4.~~2.~~ A craft distillery may not ~~only~~ ship or~~,~~ arrange to ship~~, or deliver~~ any of its distilled spirits to consumers and may sell and deliver only to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distiller licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or

federal bonded warehouses, and exporters.

5.~~3.~~ Except as provided in subparagraph 6.~~4.~~, it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.

6.~~4.~~ A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

(7) Upon the request of a craft distillery licensed in this state, the Department of Transportation shall install directional signs for the craft distillery on the rights-of-way of interstate highways and primary and secondary roads in accordance with Florida's Highway Guide Sign Program as provided in chapter 14-51, Florida Administrative Code. A craft distillery licensed in this state that requests placement of a directional sign through the department's permit process shall pay all associated costs.

Section 12. This act shall take effect July 1, 2015.