Regulatory Affairs Committee

Thursday, April 9, 2015
8:00 AM
Sumner Hall (404 HOB)

MEETING PACKET

Steve Crisafulli
Speaker

Jose Diaz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 4/7/2015 5:44:53PM)

Amended(1)

Regulatory Affairs Committee

Start Date and Time:	Thursday, April 09, 2015 08:00 am
End Date and Time:	Thursday, April 09, 2015 12:00 pm
Location:	Sumner Hall (404 HOB)
Duration:	4.00 hrs

Consideration of the following bill(s):

CS/CS/HB 107 Alcoholic Beverages by Government Operations Appropriations Subcommittee, Business & Professions Subcommittee, Steube
CS/HB 271 Consumer Protection by Business & Professions Subcommittee, Nuñez
CS/CS/HB 275 Offer or Sale of Securities by Government Operations Appropriations Subcommittee, Insurance & Banking Subcommittee, Santiago
CS/HB 617 Utility Projects by Finance & Tax Committee, Goodson
HB 887 Unclaimed Property by Trumbull
CS/CS/HB 995 Consumer Licensing by Appropriations Committee, Business & Professions Subcommittee, Trumbull, Workman
CS/HB 997 Pub. Rec./Department of Agriculture and Consumer Services by Government Operations Subcommittee, Trumbull
HJR 1239 Voter Control of Gambling Expansion in Florida by Young
CS/CS/HB 1287 Public Records/Veterinary Medical Practice by State Affairs Committee, Business & Professions Subcommittee, Renuart, Harrell
HB 7109 Florida Public Service Commission by Energy & Utilities Subcommittee, La Rosa, Peters

Consideration of the following proposed committee substitute(s):

PCS for HB 301 -- Alcoholic Beverages
PCS for HB 1233 -- Gaming

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., Wednesday, April 8 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., Wednesday, April 8, 2015.

THIS NOTICE IS AMENDED TO CORRECT THE CS LEVELS AS RECEIVED IN COMMITTEE.

NOTICE FINALIZED on 04/07/2015 17:44 by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Steve Crisafulli
Speaker

Jose Diaz
Chair

AGENDA

April 9, 2015
404 HOB
8:00 AM – 12:00 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/HB 271 by *Business & Professions Subcommittee; Rep. Nuñez*
Consumer Protection

IV. CS/CS/HB 275 by *Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Rep. Santiago and others*
Offer or Sale of Securities

V. CS/HB 617 by *Finance & Tax Committee; Rep. Goodson and others*
Utility Projects

VI. HB 887 by *Rep. Trumbull*
Unclaimed Property

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

VII. CS/CS/HB 995 by *Appropriations Committee; Business & Professions Subcommittee; Reps. Trumbull, Workman*
Consumer Licensing

VIII. CS/HB 997 by *Government Operations Subcommittee; Rep. Trumbull*
Pub. Rec./Department of Agriculture and Consumer Services

IX. HJR 1239 by *Rep. Young*
Voter Control of Gambling Expansion in Florida

X. CS/CS/HB 1287 by *State Affairs Committee; Business & Professions Subcommittee; Reps. Renuart, Harrell and others*
Public Records/Veterinary Medical Practice

XI. HB 7109 by *Energy & Utilities Subcommittee; Reps. La Rosa, Peters*
Florida Public Service Commission

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

XIII. PCS for HB 1233 by *Regulatory Affairs Committee*
Gaming

XIV. 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

[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.

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[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/HB 271 Consumer Protection
SPONSOR(S): Business & Professions Subcommittee; Nuñez
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Butler	Luczynski
2) Civil Justice Subcommittee	12 Y, 0 N	Malcolm	Bond
3) Regulatory Affairs Committee		Butler BSB	Hamon K.W.H.

SUMMARY ANALYSIS

The bill creates the "True Origin of Digital Goods Act," which requires owners and operators of websites that electronically disseminate commercial recordings and audiovisual works to provide their true and correct name, address, and telephone number or e-mail address on the website.

An owner, assignee, authorized agent, or licensee of a commercial recording or audiovisual work may bring a cause of action for declaratory and injunctive relief against an owner or operator of a website that has failed to disclose the required personal information.

Prior to filing a claim, the aggrieved party must provide the website owner or operator notice and an opportunity to cure 14 days before filing the claim. If a claim leads to the filing of a lawsuit, the prevailing party is entitled to recover expenses and attorney fees.

Proponents argue that bad actors are unlikely to disclose the personal information required by this bill, and thus, this bill will allow owners of copyrighted works to indirectly protect their intellectual property.

The bill does not appear to have a fiscal impact on local or state government.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Internet and Intellectual Property

The rise of the Internet has provided many opportunities and challenges for the free communication of thoughts and ideas. Among these challenges is the effective protection of intellectual property and copyrights when individuals can quickly and efficiently distribute creative works with virtually no barriers to reproduction. The Internet presents unique obstacles to legislating solutions because the Internet does not observe political boundaries and laws addressing conduct on the Internet may unduly restrict a person's inalienable rights of speech and expression. Here, the rights of creative content producers to choose how their works are displayed and distributed are contrasted with an individual's right to freely speak, express themselves, and share knowledge.

Copyright Law

A "copyright" is defined as a form of protection provided to the authors of original works, including published and unpublished literary, dramatic, musical, artistic, and other intellectual works.[1] A copyright exists from the moment the work is fixed in a permanent or stable form, such as a recording or copy.[2] The copyright immediately becomes the author's property without further action by the author.[3] However, to pursue and protect his or her rights under copyright law, the author must register his or her copyright with the copyright office.[4]

Article I, s. 8, cl. 8, of the United States Constitution grants Congress the power to create and regulate copyright law.[5] Federal law expressly preempts all state copyright law for music recordings copyrighted on or after February 15, 1972.[6] As a result, Florida copyright law is limited to recordings fixed prior to February 15, 1972.[7]

It is possible that the Federal Copyright Act may "completely preempt" any state laws related to a copyrighted work produced after 1972. Under the "complete preemption doctrine," state law claims that are "arising under" the subject matter of the federal law are invalidated if Congress intended for the federal remedy to be the exclusive remedy for an injury related to the federal law. As such, federal courts are granted exclusive jurisdiction to decide claims and causes of action related to the federal law.[8]

Several Federal Circuit Courts have held that the "complete preemption doctrine" can be applied to Federal Copyright Law; however, the Eleventh Circuit Court of Appeals, which directly controls questions of Federal law within Florida, has not held whether the complete preemption doctrine applies to Copyright Law.[9]

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[1] United States Copyright Office, *Copyright Basics* 1, (2012), *available at* http://www.copyright.gov/circs/circ01.pdf (last accessed March 9, 2015).
[2] *Id.*
[3] "No publication or registration or other action in the Copyright Office is required to secure a copyright." *Id.*
[4] 17 U.S.C. § 411.
[5] "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. CONST. art. I, § 8, cl. 8.
[6] 17 U.S.C. §301(a).
[7] s. 540.11(2)(a), F.S.
[8] 17 U.S.C § 301 (2012); *Briarpatch Ltd., L.P v. Phoenix Pictures, Inc.*, 373 F.3d 296, 303 (2d Cir. 2004).
[9] *Stuart Weitzman, LLC v. Microcomputer Res., Inc.*, 542 F.3d 859, 864 (11th Cir. 2008) (noting that the First, Second, Fourth and Sixth Circuits have all held that the Copyright Act has complete preemptive effect).

Internet Copyright Law

The Digital Millennium Copyright Act[10] (DMCA) was passed in 1998 to update and modernize the United States' copyright protections for the Internet age. The DMCA criminalizes production and dissemination of technology used to circumvent digital rights management software (DRM) and other types of access controls, and heightens the penalties for copyright infringement on the Internet. The DMCA also provides several "safe harbor" provisions for providers of online services (such as YouTube) that provide hosting for user generated content. Under the DMCA's safe harbor provisions, online services that follow the DMCA's takedown procedures are able to limit their liability for the copyright infringement of users of their service.[11]

When used appropriately, the DMCA's safe harbor provisions protect copyright owners. However, there are many reports of bad actors abusing DMCA takedown requests to remove completely legal content. In order to benefit from the protections of the DMCA's safe harbor provisions, an online service must immediately remove any content that is identified as offending at the request of a self-identified content owner or face financial liability for possible infringements. Many online services do not have the ability to review every takedown request and simply remove any flagged content. Further, it is difficult to hold persons accountable who abuse the DMCA takedown provisions as a tool for censorship.[12]

Some examples of improper takedown requests include misidentification of copyrighted works,[13] meritless takedown requests of political ads,[14] or takedown requests performed with malice and the intent to harm the content producer's reputation or revenue.[15] DMCA takedown notices used improperly can be used to censor speech and may have a chilling effect on free speech.[16]

Enforcement of Copyright Laws

Enforcement of one's copyright against an anonymous copyright infringer on the Internet can be difficult. Websites that sell counterfeit goods are far less likely to have a U.S. phone or address listed than an authorized website that sells legitimate goods.[17] Owners of infringed copyright material must locate the actual infringing actor in order to enforce their copyrights.

The Copyright Office of the United States has identified bad actors who build online businesses based upon infringing copyright and engaging in related illegal activity.[18] The operators of these sites are able to act with impunity because there is little expectation of enforcement of copyright or other laws on content that is hosted outside of the United States.

These rogue websites flagrantly engage in activities that ignore United States copyright law, and offer for sale or download many copyrighted movies, music, books, and software produced and created

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[10] Digital Millennium Copyright Act, PL 105–304, Oct. 28, 1998, 112 Stat 2860.
[11] *See generally, Viacom Int'l, Inc. v. YouTube, Inc.*, 676 F.3d 19, 25 (2d Cir. 2012).
[12] *See generally,* Lydia Pallas Loren, Deterring Abuse of the Copyright Takedown Regime by Taking Misrepresentation Claims Seriously, 46 Wake Forest L. Rev. 745, 746 (2011) (discussing copyright takedown abuse, and noting that "misrepresentation claims have been brought [against abusers of takedown notices], and the early interpretations of the [misrepresentation] provisions have limited their effectiveness in curbing abuse").
[13] *See* John Schwartz, *She Says She's No Music Pirate. No Snoop Fan, Either*, N.Y. TIMES (September 25, 2003), http://www.nytimes.com/2003/09/25/business/media/25TUNE.html.
[14] Center for Democracy & Technology, *CDT Releases Report on Meritless DMCA Takedowns of Political Ads,* (Oct. 12, 2010), https://cdt.org/insight/cdt-releases-report-on-meritless-dmca-takedowns-of-political-ads/.
[15] *See generally,* Google, *Transparency Report,* http://www.google.com/transparencyreport/removals/copyright/faq/ (Listing several "inaccurate or intentionally abusive copyright removal requests" submitted to Google).
[16] Wendy Seltzer, Free Speech Unmoored in Copyright's Safe Harbor: Chilling Effects of the DMCA on the First Amendment, 24 Harv. J.L. & Tech. 171 (2010).
[17] Jeremy Wilson and Roy Fenokff, *Distinguishing Counterfeit from Authorized Retailers in the Virtual Marketplace*, 39 International Criminal Justice Review 24(1), 2014.
[18] Maria A. Pallante, Acting Register of Copyrights, *Promoting Investment and Protecting Commerce Online: Legitimate Sites v. Parasites, Part I*, (Mar. 14, 2011), *available at* http://www.copyright.gov/docs/regstat031411.html.

within the United States. Many rogue websites make money through both direct transactions (selling copyrighted content) and indirect transactions (ad revenue or subscription services).

Rogue websites may also attempt to steal a consumer's financial information and take advantage of unsuspecting consumers private information. Some rogue websites may falsely state that they have relationships with well-known payment processing services (such as credit cards); however, when a consumer attempts to pay, the website redirects payment to alternative and possibly unsecure services.

Attempted Federal Solutions

The Stop Online Privacy Act (SOPA) was introduced to Congress on October 26, 2011, with the intent to expand the ability of United States law enforcement to combat online copyright infringement and the online trafficking of counterfeit goods. The bill faced intense scrutiny after its introduction.

Provisions included requesting court orders to bar advertising networks and payment facilities from conducting business with infringing websites, preventing search engines from linking to identified rogue websites, and expediting court orders to require Internet service providers block access to rogue websites. The proposed law would have expanded criminal laws to include unauthorized streaming of copyrighted content and imposed a maximum penalty of five years in prison.

Proponents stated the legislation would protect the intellectual-property market and corresponding industry, jobs, and revenue, and was necessary to bolster enforcement of copyright laws, claiming current laws do not cover foreign-owned or operated websites, and citing examples of rogue websites that were flagrantly offending U.S. copyright law.[19]

Opponents claimed the proposed legislation was expansive and would impose liability on many more entities than just rogue websites. Opponents argued that the bill threatened freedom of speech and innovation on the Internet, would bypass the safe harbor provisions of the DMCA, and would even expose libraries to prosecution for previously completely legal and free speech conduct.[20]

In protest of SOPA and its House counterpart the PROTECT IP Act (PIPA), many online services, websites, and consumers organized an online blackout in an attempt to illustrate the possible repercussions should they be passed. On January 18, 2012, the English Wikipedia, Google, Reddit, and an estimated 7,000 websites coordinated a service blackout in protest against the bills.[21] A petition at Google recorded over 4.5 million signatures;[22] and lawmakers reportedly collected "more than 14 million names—more than 10 million of them voters—who contacted them to protest" the bills.[23] The bills were ultimately postponed until an agreement on a solution could be found.

Protecting Personal Information on the Internet

There is an inherent risk involved when disclosing private information on the Internet. Bad actors can use information found on the Internet to assist in identity theft, use personal information to harass, extort, coerce, or publicly shame a person by violating their online privacy, and even trick an

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[19] David Carr, *The Danger of an Attack on Piracy Online*, N.Y. TIMES (Jan. 2, 2012), at B1, *available at* http://www.nytimes.com/2012/01/02/business/media/the-danger-of-an-attack-on-piracy-online.html.
[20] *Id.*
[21] Rob Waugh, *U.S. Senators withdraw support for anti-piracy bills as 4.5 million people sign Google's anti-censorship petition*, DAILYMAIL.COM (Jan. 20, 2012), http://www.dailymail.co.uk/sciencetech/article-2088860/SOPA-protest-4-5m-people-sign-Googles-anti-censorship-petition.html.
[22] Deborah Netburn, *Wikipedia: SOPA protest led 8 million to look up reps in Congress*, L.A. TIMES BLOGS (Jan. 19, 2012), *available at* http://latimesblogs.latimes.com/technology/2012/01/wikipedia-sopa-blackout-congressional-representatives.html.
[23] Jonathan Weisman, *After an Online Firestorm, Congress Shelves Antipiracy Bills*, N.Y. TIMES, (Jan. 21, 2012) at B6, *available at* http://www.nytimes.com/2012/01/21/technology/senate-postpones-piracy-vote.html.

emergency service into dispatching a police response team to a target's address based on false reports of imminent danger or injury.[24]

Balanced Solutions for Protecting Copyrighted Works Outside of Federal Copyright Law

In 2004, California passed the "True Name and Address" act, which makes the knowing electronic dissemination of a commercial recording or audiovisual work to more than 10 people without the disclosure of the disseminator's e-mail address a misdemeanor.[25]

This law exempts several legal dissemination methods from requiring personal disclosure, such as dissemination on personal networks, persons acting with permission of the copyright owner (licensees), persons acting under the authority of the copyright owner (agents), and works that have been freely disseminated without limitation. At least one commentator has argued that California's law should be preempted by Federal Copyright Law.[26]

Tennessee passed a law in July 2014 similar to this bill with criminal penalties and enforcement.[27] This law requires the owner or operator of a website dealing in electronic dissemination of commercial recordings or audiovisual works to clearly post his or her true and correct name, physical address, and telephone number. If the website's owner fails to disclose his or her address, he or she may be enjoined to enforce compliance and fined for failure to do so.[28] Tennessee requires these actions to be initiated and sustained by the Tennessee Attorney General's Office.[29]

Effect of the Bill

The bill creates s. 501.155, F.S., the "True Origin of Digital Goods Act," to require owners or operators of websites[30] that deal "in substantial part" with the dissemination commercial recordings or audiovisual works to clearly post on the website and make readily accessible to a consumer using or visiting the website the following information:

- The true and correct name of the operator or owner;
- The operator or owner's physical address; and
- The operator or owner's telephone number or e-mail address.

The phrase "in substantial part" is not defined. It is unclear how many "commercial recordings or audiovisual works" must be disseminated by a website before the website or online service is considered to be dealing "in substantial part" in the dissemination of such under this bill.

The disclosure requirements of this bill are required even if all recordings or audiovisual works disseminated by the website are owned by the website owner.

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[24] Sasha Goldstein, *Suburban Denver 'swatting' incident caught on gamer's camera*, N.Y. DAILY NEWS (Aug. 27, 2014), http://www.nydailynews.com/news/national/suburban-denver-swatting-incident-caught-gamer-camera-article-1.1919640 (reporting on YouTube user Jordan Mathewson being swatted and broadcasted the incident live while streaming playing games over the Internet); Brian Crecente, *Destiny developer startled awake by police sheriff's helicopter after faked 911 call*, POLYGON (Nov. 7, 2014), http://www.polygon.com/2014/11/7/7172827/destiny-swatting (Unnamed Destiny video game developer is a victim of a swatting in Washington State home).

[25] Cal. Penal Code §653aa.

[26] Brian McFarlin, From the Fringes of Copyright Law: Examining California's "True Name and Address" Internet Piracy Statute, 35 Hastings Const. L.Q. 547, 557 (2008).

[27] Tenn. Code §47-18-401 – 47-18-407 (2014).

[28] *Id.*

[29] *Id.*

[30] The bill specifically exempts providers of interactive computer services, communication services, commercial mobile services, information services that provide transmission, storage, or caching of electronic communications or other related telecommunications service, and commercial mobile radio services.

The bill defines a "commercial recording or audiovisual work," as a:

> [A] recording or audiovisual work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate such recording or audiovisual work for sale, rental, or for performance or exhibition to the public, including under license, but does not include an excerpt consisting of less than substantially all of a recording or audiovisual work. A recording or audiovisual work may be commercial regardless of whether a person who electronically disseminates it seeks commercial advantage or private financial gain from the dissemination. The term does not include video games, depictions of video game play, or the streaming of video game activity.

A "recording or audiovisual work" that is disseminated or intended to be disseminated for sale, rental, performance or exhibition, appears to include all video or audio content available on the Internet. Any recording or audiovisual work that is on the Internet is likely exhibited to the public. The definition "commercial recording or audiovisual work" appears to include commercial and noncommercial recordings and audiovisual works as it does not require a person to seek commercial advantage or private financial gain to be considered "commercial" in this bill.

The definition excludes "an excerpt consisting of less than substantially all of a recording or audiovisual work". This language seems to limit the definition of "commercial recording or audiovisual work" to only those works that are complete, and not include simply portions or excerpts of said works. In some cases, an excerpt may be considered a "commercial recording or audiovisual work" completely independent of the original work.

The definition explicitly excludes video games, video game streaming, or depictions of video game play from the definition of "commercial recording or audiovisual work." This exception would remove a significant amount of content from the definition of "commercial recording or audiovisual work."

Video or audio content on a website will thus be excluded, so long as the video or audio content only contains "video games, depictions of video game play, or the streaming of video game activity." Additional content within such videos such as commentary, music, soundtracks, or other non-video game related content may cause such videos to be considered "commercial recordings or audiovisual works" under this bill and subject to the disclosure requirements.

The bill defines a "website" as a "set of related webpages served from a single web domain." Further, the bill clarifies that the term "website" does not include "a homepage or channel page for the user account of a person that is not the owner or operator of the website upon which such user homepage or channel page appears."

The bill defines "electronic dissemination" to mean the transmission of, making available, or otherwise offering a "commercial recording or audiovisual work" for distribution through the Internet. The definition of electronic dissemination includes many forms of hosting content on the Internet, including directly hosting, linking to content hosted elsewhere, or otherwise distributing information where "commercial recordings or audiovisual works" may be located.

Injunctive Relief

The bill allows an "owner, assignee, authorized agent, or licensee" of a "commercial recording or audiovisual work" that was electronically disseminated by a website where the owner or operator of said website knowingly failed to disclose their personal information to bring a private cause of action to enforce the disclosure requirements of this bill.

As a condition precedent to filing suit under the cause of action created by this bill, the individual must make reasonable efforts to place the owner or operator on notice of the violation and that failure to cure within 14 days may result in a civil action filed in a court of competent jurisdiction.

It is unclear if Florida could assert jurisdiction over foreign websites should an aggrieved party attempt to enforce the disclosure requirements of this bill against a website owner or operator located outside of Florida. Proponents do not expect websites owners or operators located outside of Florida to respond to law suits or submit willingly to jurisdiction in Florida courts. As such, proponents expect for any proceedings against owners or operators of websites located outside of Florida to end in default judgments.

Following a default or other declaratory judgment, proponents intend to proceed with third party injunctions to discourage Internet service providers, hosting services, payment services or other Internet website services from working with websites that fail to disclose their personal information required by this bill.

Proponents argue that bad actors are unlikely to disclose the personal information required by this bill, and thus, this bill will allow owners of copyrighted works to indirectly protect their intellectual property.

The bill allows prevailing party in a cause under this section is entitled to recover necessary expenses and reasonable attorney fees.

B. SECTION DIRECTORY:

Section 1 creates s. 501.155, F.S., related to the electronic dissemination of commercial recordings or audiovisual works; required disclosures; and injunctive relief.

Section 2 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

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:

Federal Preemption of Copyright Law

The United States Constitution explicitly grants Congress the power to create copyright law with the copyright clause, which states, "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."[31]

The Federal Copyright Act provides exclusive jurisdiction to federal district courts of claims and causes of action that "arise under" any Congressional act related to copyright.[32] Even in situations where a copyright is not directly at issue and only state law claims are argued, such state law claims could still potentially be preempted by the Copyright Act.[33]

Under the "complete preemption doctrine," Federal law completely preempts a state law "arising under" a Congressional act.[34] Citing the Supreme Court's recent decision in *Beneficial Nat. Bank v. Anderson*,[35] expanding the doctrine of complete preemption, the Second Circuit Court of Appeals found that copyright claims and all legal and equitable rights related to copyright fall within the exclusive jurisdiction of the federal courts.[36] The Second Circuit detailed a two-pronged analysis to determine if a state law would be preempted by the Copyright Act, specifically:

> The Copyright Act exclusively governs a claim when: (1) the particular work to which the claim is being applied falls within the type of works protected by the Copyright Act under 17 U.S.C. §§ 102 and 103, and (2) the claim seeks to vindicate legal or equitable rights that are equivalent to one of the bundle of exclusive rights already protected by copyright law under 17 U.S.C. § 106.[37]

The prongs of this test are referred to as the "subject matter requirement" and the "general scope requirement.[38] The subject matter requirement is satisfied if the claim is related to an act or work that would normally be covered by the Copyright Act.[39] The general scope requirement is only satisfied when a state law affects a right provided by federal copyright law, or specifically, a state regulates acts of reproduction, adaptation, performance, distribution or display of copyrighted works.[40]

The Eleventh Circuit Court of Appeals decides questions of Federal law within Florida, secondary only to the Supreme Court of the United States, and has not held whether the Copyright Act has complete preemptive effect, although it did note that "four other circuits have held that at least some

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[31] U.S. CONST. art. 1, § 8, cl. 8.
[32] 17 U.S.C § 301; *Briarpatch*, 373 F.3d at 303.
[33] *Briarpatch*, 373 F.3d at 303.
[34] *Id.*
[35] 539 U.S. 1, 11 (2003).
[36] *Briarpatch*, 373 F.3d at 303.
[37] *Id.* at 305.
[38] *Id.* at 303.
[39] *Id.*
[40] *Id.*

state law claims are preempted by the Copyright Act such that federal subject matter jurisdiction exists over the claim under the complete preemption doctrine."[41]

Freedom of Speech: Right Not to Speak

The First Amendment promotes the free exchange of ideas and information by prohibiting the government from restricting speech because of the message expressed.[42]

Not only does the First Amendment protect the right to speak, but it protects the right to refrain from speaking and the right to refrain from endorsing any particular view. In *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*,[43] the United States Supreme Court held that a state could not require a private parade sponsor to allow participation by a group which imparted a message that the sponsoring organization did not wish to convey.[44] Despite the general prohibition against forced speech, however, federal courts have allowed certain organizations to collect dues and fees that may be used to engage in advocacy hostile to the beliefs of some dues payers.

The bill requires a person who owns or operates a website to disclose certain personal information. This disclosure requirement may have First Amendment implications regarding a person's right not to speak and not to disclose such personal information to the public.

Freedom of Speech: Overbroad Regulations

Additionally, under the First Amendment, laws that burden substantially more speech than is necessary to further a compelling interest are invalid.[45] Overbroad regulations are disfavored because they produce a chilling effect on free speech by dissuading the exercise of legitimate First Amendment Rights.[46] Overbroad regulations also lend themselves to selective enforcement.[47] The overbreadth doctrine contains an important exception to normal standing requirements. It allows a litigant challenging an overbroad regulation to assert the First Amendment rights of persons not before the court.

The disclosure requirements of this bill will apply to a large amount of content and websites currently on the Internet, which may have First Amendment overbreadth implications.

Personal Jurisdiction over Foreign Parties

For a court to exercise jurisdiction over a corporation or individual, the court must have both personal jurisdiction and subject matter jurisdiction. State courts have general jurisdiction, therefore a claim made under a state statute meets the subject matter jurisdiction requirement. Personal jurisdiction requirements ensure that a defendant has sufficient notice and due process required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution before his or her rights are subjected to the Court.[48] Specifically, due process requires that a defendant have minimum contacts with the state in which the court sits.[49]

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[41] *See Stuart Weitzman, LLC*, 542 F.3d at 864 (noting that the First, Second, Fourth and Sixth Circuits have all held that the Copyright Act could have complete preemptive effect).
[42] *See, e.g.*, Texas v. Johnson, 491 U.S. 397 (1989); *State v. T.B.D.*, 656 So.2d 479 (Fla. 1995).
[43] 515 U.S. 557 (1995).
[44] *See also West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)(a school may not require students to salute the flag or recite the pledge of allegiance).
[45] *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)(requiring "substantial" overbreadth); *Thornhill v. Alabama*, 310 U.S. 88, 99-101 (1940).
[46] Reno v. ACLU, 521 U.S. 844, 871-72 (1997).
[47] In re Primus, 436 U.S. 412, 432-33 (1978).
[48] *Walden v. Fiore*, 134 S. Ct. 1115, 1121, (2014).
[49] *Id.*

A non-resident defendant may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.[50] Alternately, the non-resident defendant may be subject to a Florida court's personal jurisdiction because he or she has minimum contacts with the state that are otherwise unrelated to the matter that brings him or her into court "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"[51]

A defendant's minimum contacts sufficient to create specific jurisdiction must be contacts that the defendant him or herself has created with the state itself and not with persons who reside there.[52] "Due process requires that a defendant be haled into court in a forum state based on his own affiliation with the state, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the state."[53] Examples of sufficient minimum contacts include frequent business travel to the state, owning a company with a Florida office branch, or subjecting him or herself to the court's jurisdiction by being present in the Florida court.[54]

Additionally, intentional conduct by an out-of-state tortfeasor that creates contacts with the forum state may be sufficient for a court to exercise jurisdiction over the defendant.[55] However, a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.[56]

Whether a non-resident website owner or operator that electronically disseminates commercial recordings or audiovisual works into Florida has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.[57]

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The phrase "less than substantially all" is not defined. It is unclear when a "commercial recording or audiovisual work" is no longer "substantially all" of the work, or at what point an excerpt would no longer be considered a "commercial recording or audiovisual work" under the bill.

As noted above, it is unclear if Florida could assert jurisdiction over foreign websites should an aggrieved party attempt to enforce the disclosure requirements of this bill against a website owner or operator located outside of Florida. Proponents do not expect websites owners or operators located outside of Florida to respond to lawsuits or submit willingly to jurisdiction in Florida courts. As such, proponents expect for any proceedings against owners or operators of websites located outside of Florida to end in default judgments and the issuance of an injunction. The injunction may be used to prove to the host ISP that the website violated state law, and therefore is in violation of the ISP's terms of service agreement.[58]

The ISP generally revokes its contract with the website based on such violation and shuts down the website. Proponents argue that bad actors are unlikely to disclose the required information, and thus, the bill will allow owners of copyrighted works to indirectly protect their intellectual property.

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[50] *Caiazzo v. American Royal Arts Corp.*, 73 So.3d 245, 250 (Fla. 4th DCA 2011); s. 48.193, F.S.
[51] *Walden*, 134 S. Ct. at 1121; *Caiazzo*, 73 So.3d at 250.
[52] *Walden*, 134 S. Ct. at 1121.
[53] *Id.* at 1123.
[54] *Caiazzo*, 73 So.3d at 250.
[55] *Walden*, 134 S. Ct. at 1123.
[56] *Id.*
[57] *See Caiazzo*, 73 So.3d 245; *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).
[58] ISPs' Terms of Service Agreements frequently forbid the user website from engaging in illegal activity.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Business & Professions Subcommittee considered and adopted three amendments. These amendments:

- Define "website";
- Provide that the person with a cause of action against a website is the owner, assignee, authorized agent, or licensee of a "work" that was electronically disseminated by the website that failed to meet the disclosure requirements of this bill; and,
- Require that a person knowingly violate the disclosure requirements of this bill, and prior to filing a cause of action created by this bill, the aggrieved party must make reasonable efforts to place the owner or operator on notice of the violation and provide an opportunity to cure.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to consumer protection; creating s. 501.155, F.S.; providing a short title; providing applicability; providing definitions; requiring owners and operators of specified websites and online services to disclose certain information; providing for injunctive relief; providing an effective date.

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

Section 1. Section 501.155, Florida Statutes, is created to read:

501.155 Electronic dissemination of commercial recordings or audiovisual works; required disclosures; injunctive relief.—

(1) SHORT TITLE.—This section may be cited as the "True Origin of Digital Goods Act."

(2) APPLICABILITY.—This section is supplemental to those provisions of state and federal criminal and civil law which impose prohibitions or provide penalties, sanctions, or remedies against the same conduct prohibited by this section. This section does not:

(a) Bar any cause of action or preclude the imposition of sanctions or penalties that would otherwise be available under state or federal law.

(b) Impose liability on providers of an interactive computer service, communications service as defined in s.

202.11(1), commercial mobile service, or information service, including, but not limited to, an Internet access service provider and a hosting service provider, if they provide the transmission, storage, or caching of electronic communications or messages of others or provide another related telecommunications, commercial mobile radio service, or information service, for use of such services by another person in violation of this section. This exemption from liability is consistent with and in addition to any liability exemption provided under 47 U.S.C. s. 230.

(3) DEFINITIONS.—As used in this section, the term:

(a) "Commercial recording or audiovisual work" means a recording or audiovisual work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate such recording or audiovisual work for sale, rental, or for performance or exhibition to the public, including under license, but does not include an excerpt consisting of less than substantially all of a recording or audiovisual work. A recording or audiovisual work may be commercial regardless of whether a person who electronically disseminates it seeks commercial advantage or private financial gain from the dissemination. The term does not include video games, depictions of video game play, or the streaming of video game activity.

(b) "Electronic dissemination" means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution

through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.

(c) "E-mail address" means an electronic mail address as defined in s. 668.602.

(d) "Website" means a set of related web pages served from a single web domain. The term does not include a home page or channel page for the user account of a person that is not the owner or operator of the website upon which such user home page or channel page appears.

(4) DISCLOSURE OF INFORMATION.—

(a) A person who owns or operates a website or online service dealing in substantial part in the electronic dissemination of commercial recordings or audiovisual works, directly or indirectly, to consumers in this state shall clearly and conspicuously disclose his or her true and correct name, physical address, and telephone number or e-mail address on his or her website or online service in a location readily accessible to a consumer using or visiting the website or online service.

(b) The following locations are deemed readily accessible for purposes of this subsection:

1. A landing or home web page or screen;

2. An "about" or "about us" web page or screen;

3. A "contact" or "contact us" web page or screen;

4. An information web page or screen; or

5. Another place on the website or online service commonly used to display identifying information to consumers.

(5) INJUNCTIVE RELIEF.—

(a) An owner, assignee, authorized agent, or licensee of a commercial recording or audio visual work that is electronically disseminated by a website or online service in violation of this section may bring a private cause of action to obtain a declaratory judgment that an act or practice violates this section and enjoin any person who knowingly has violated, is violating, or is otherwise likely to violate this section. As a condition precedent to filing a civil action under this section, the aggrieved party must make reasonable efforts to notify the person alleged to be in violation of this section of such violation and that failure to cure the violation within 14 days may result in a civil action being filed in a court of competent jurisdiction.

(b) Upon motion of the party instituting the action, the court may make appropriate orders to compel compliance with this section.

(c) The prevailing party in a cause under this section is entitled to recover necessary expenses and reasonable attorney fees.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 275 Offer or Sale of Securities
SPONSOR(S): Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Santiago
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	11 Y, 1 N, As CS	Keith	Topp
3) Regulatory Affairs Committee		Bauer	Hamon K.W.H.

SUMMARY ANALYSIS

Crowdfunding describes an evolving method of raising funds for a variety of innovative projects, artistic endeavors, and non-profit political and charitable causes, typically through small individual contributions from a large number of people through the Internet. Most crowdfunding projects are *donation-based* or *rewards-based*, where the donor does not receive anything or may receive a free token of gratitude for funding the project. Under this model, the donation is akin to a gift, not a security. In recent years, there has been a growing interest in the use of *equity crowdfunding* to provide start-up or seed capital for small businesses and other ventures that are promoted on the basis of a potential economic return to the donors. Equity crowdfunding implicates state and federal securities laws, which require registration of securities and market participants by the U.S. Securities & Exchange Commission and state securities regulators, unless an applicable exemption applies. These laws also contain disclosure requirements and civil remedies for investors.

In 2012, Congress enacted the Jumpstart Our Business Startups (JOBS) Act in an effort to ease regulatory burdens faced by startups and small businesses in connection with capital formation, especially for relatively small-dollar amounts. Title III of the JOBS Act created a new registration exemption from federal securities law to permit the issuance, offer, and sale of up to $1 million of crowdfunding securities per year, subject to specified requirements for issuers and intermediaries, and is not limited to accredited investors. However, national equity crowdfunding under Title III is not permitted until the SEC implements Title III by final rule, which has not yet been completed. In response to the delay, a number of states have recently enacted intrastate crowdfunding exemptions, which combine some elements of Title III of JOBS with §3(a)(11) of the 1933 Act, which exempts issuers from federal registration if the issuer, purchaser, and securities offering are all contained within the same state.

The bill creates an intrastate crowdfunding exemption within the Florida Securities and Investor Protection Act, ch. 517, F.S., which is administered by the Florida Office of Financial Regulation (OFR). The issuer, intermediary, investor, and transaction must all be in Florida in accordance with the federal intrastate exemption. Like Title III of JOBS, the bill exempts an issuer and the offering for a 12-month online offering up to $1 million of securities, requires registration for the intermediary, and mirrors the federal law's investment limitations for investors. The bill requires issuer notice filings and intermediary registration with OFR, initial and periodic disclosures to investors, an escrow agreement for investor funds, a right of rescission, and financial reporting to investors and to the OFR. Filing fees for issuers and intermediaries will be deposited into the Regulatory Trust Fund of the OFR. The bill also gives authority to the Financial Services Commission to adopt rules relating to notice-filing and registration forms, books and records, and investor protections.

The bill appropriates $120,000 in nonrecurring funds from the Regulatory Trust Fund within the OFR to implement provisions of the bill. The bill has an indeterminate positive fiscal impact on state revenues deposited into the Regulatory Trust Fund within the OFR.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Crowdfunding – Donation/Rewards vs. Equity Models

Crowdfunding describes an evolving method of raising funds for a variety of projects, typically through small individual contributions from a large number of people through the Internet. These projects often involve innovative product ideas or artistic endeavors like movies or music, as well as political, charitable, and non-profit causes. Currently, the most popular forms of crowdfunding are *donation-based*, where the donor does not receive anything in exchange, or *rewards-based*, where the donor may receive a free item (such as a t-shirt or movie ticket) as a token of gratitude for funding the project. These projects are increasingly facilitated online through platforms such as Kickstarter, Indiegogo, and Fundable. Under this model, the donation is akin to a gift, not a security.

In recent years, there has been a growing interest in the use of *equity crowdfunding* to provide start-up or seed capital for small businesses and other ventures that are promoted on the basis of a potential economic return to the donors. As discussed in further detail below, equity crowdfunding has been particularly attractive for small or emerging businesses since the 2008-2009 recession and the resulting constriction in the credit markets, although borrowing conditions for small businesses have been gradually improving.

Unlike donation- or rewards-based crowdfunding, *equity crowdfunding* triggers the application of the federal and state securities laws. Both federal and Florida securities law broadly define "security" to include, among other things: notes; stocks; bonds; debentures; certificates of deposit; evidence of indebtedness; and investment contracts.[1] In 1946, the U.S. Supreme Court interpreted "investment contract" to include the purchase of a real estate interest in a Lake County, Florida citrus grove that included an optional management package. The Court articulated the following test (sometimes referred to as the *Howey* test) that is widely used at the state levels to determine the existence of a security:

1. An investment of money due to
2. an expectation of profits arising from
3. a common enterprise
4. which depends solely on the efforts of a promoter or third party.[2]

Securities Regulation

Federal Securities Regulation

The federal Securities Act of 1933 ("'33 Act"), often described as a "truth in securities" act, requires every offer or sale of securities using the means and instrumentalities of interstate commerce to be registered with the U.S. Securities & Exchange Commission (SEC), unless an exemption (such as the intrastate exemption, discussed below) is available.[3] The '33 Act's emphasis on disclosure of important financial information through the registration of securities enables investors to make informed judgments about whether to purchase a company's securities. While the SEC requires that the information provided be accurate, it does not guarantee it. Investors who purchase securities and suffer losses have important recovery rights if they can prove that there was incomplete or inaccurate

[1] 15 U.S.C. § 77b(a)(1) and s. 517.021(21), F.S.
[2] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).
[3] 15 U.S.C. §§ 77a-77aa.

disclosure of important information.[4] Once a company is registered under the '33 Act or becomes publicly traded, it becomes subject to periodic reporting requirements under the federal Securities Exchange Act of 1934, which also requires registration of market participants like broker-dealers and exchanges.[5]

State Securities Regulation

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker-dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.[6] In Florida, the Securities and Investor Protection Act, ch. 517, F.S. ("the Act"), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (the OFR)'s Division of Securities regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the Act and Chapter 69W, Florida Administrative Code.[7] As of December 2014, the OFR oversees:

- 2,789 dealers
- 5,182 investment advisers
- 10,373 branch offices
- 296,271 stockbrokers.[8]

The Act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[9] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).[10] Failure to meet the precise requirements of these exemptions, can subject the issuer to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony in Florida.[11] Civil remedies under the act include rescission and damages.[12] In addition, issuers must comply with disclosure requirements in state and federal laws that provide potential investors with full and fair disclosures regarding the security.

In 2009, the Legislature amended the Act to expand the jurisdiction of the statewide grand jury and the Office of Statewide Prosecution to consider and prosecute violations of the Florida Money Laundering Act and the Act. Additionally, the 2009 legislation expanded the investigative and enforcement authority of Office of the Attorney General for commodities, antifraud, and boiler room telephonic sales violations, in coordination with OFR.[13]

Currently, no Florida exemption permits the advertising or solicitation for the offer or sale of unregistered securities to the general public, or for securities sold to the general public to be sold by an unregistered dealer.

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[4] U.S. SECURITIES & EXCHANGE COMMISSION, *The Laws That Govern the Securities Industry*, http://www.sec.gov/about/laws.shtml (last visited February 10, 2015).
[5] *Id.*
[6] U.S. SECURITIES & EXCHANGE COMMISSION, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm
[7] Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.
[8] Office of Financial Regulation, *Fast Facts* (2nd ed., Dec. 2014), at http://flofr.com/StaticPages/documents/FastFacts2015.pdf
[9] s. 517.12, F.S.
[10] s. 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S., requires the broker or issuer to notify OFR that the security is registered with the SEC.
[11] s. 517.302(1), F.S.
[12] s. 517.211(3-5), F.S.
[13] Ch. 2009-242, Laws of Fla; *see* s. 517.191(5), F.S.

Self-Regulatory Organizations

The Financial Industry Regulatory Authority, Inc. (FINRA) is the largest private self-regulatory organization for all securities firms doing business in the United States.[14] FINRA was formed as a result of a 2007 merger between its predecessor, the National Association of Securities Dealers, and certain operational arms of the New York Stock Exchange. In addition to operating the largest securities arbitration forum in the U.S., FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, which are central databases for registration, reporting, and disclosure information for the securities industry.

Funding Sources for Startups and Small Businesses

According to the U.S. Small Business Administration (SBA), the most common startup sources are owners' savings, family contributions, and external credit (i.e., bank or finance company loans, credit cards, credit lines).[15] A 2012 study by the National Small Business Association found that 43% of small business owners surveyed could not obtain the financing they needed.[16] The SBA reported that small businesses (meaning an independent business having fewer than 500 employees) make up over 99% of employer firms in the U.S. Below are funding options for small and startup businesses, and trends following the 2008-2009 recession.

Bank Lending

Bank lending data from 2006-2013 shows that small business loans (under $1 million) declined from a lending peak in 2008, with a decline of 18% from 2008-2013.[17] However, small businesses have experienced gradually improving borrowing conditions, although at an uneven and slower pace than those for large firms. The SBA estimated that total small business borrowing amounted to almost $1 trillion in 2013.[18]

Surveys from mid-2013 indicate that the net portion of small businesses having difficulty obtaining credit has declined, and approval rates for small business loans has increased at credit unions and at large banks (i.e., those with $10 billion or more in assets). Many commercial banks reported easing their lending conditions and terms, although not to pre-recession levels. However, bank lending growth has been weaker for small business loans, partly due to regulatory demands such as increased bank capital requirements as well as increased collateral and underwriting requirements for borrowers.[19] According to a 2014 Federal Reserve study, most banks expect a moderate increase in retail small business lending in 2015.[20] The Federal Reserve recently reported that for its Atlanta district (which includes Florida), "while large businesses had easy access to credit, small businesses were experiencing small improvements in their ability to access credit."[21] This reflects the greater risk in lending to smaller businesses, as the latter are more sensitive to economic swings and have fewer collateral.

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[14] About FINRA, http://www.finra.org/AboutFINRA/

[15] SEC Proposed Regulation Crowdfunding, pp. 325-326; Small Business Administration Office of Advocacy, *Small Business Finance: Frequently Asked Questions* (Feb. 2014), at: https://www.sba.gov/category/advocacy-navigation-structure/frequently-asked-questions-about-small-business-finance

[16] NATIONAL SMALL BUSINESS ASSOCIATION, *Small Business Access to Capital Survey* (July 11, 2012), p. 4, http://www.nsba.biz/wp-content/uploads/2012/07/Access-to-Capital-Survey.pdf .

[17] U.S. SECURITIES & EXCHANGE COMMISSION, Proposed Regulation Crowdfunding, pp. 325-326, *citing* Federal Deposit Insurance Corporation, *Statistics on Banking, available at*: http://www2.fdic.gov/SDI/SOB/

[18] SBA Small Business Finance FAQ, p. 1

[19] Victoria Williams, *Small Business Lending in the United States 2013*, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION , Dec. 2014, at: https://www.sba.gov/advocacy/small-business-lending-united-states-2013

[20] THE FEDERAL RESERVE BOARD, *The October 2014 Senior Loan Officer Opinion Survey on Bank Lending Practices* (Oct. 2014), at: http://www.federalreserve.gov/BoardDocs/snloansurvey/201411/default.htm

[21] FEDERAL RESERVE, *Summary of Commentary on Current Economic Conditions by Federal Reserve District* (Jan. 14, 2015), *available at* http://www.federalreserve.gov/monetarypolicy/beigebook/default.htm)

Additionally, some bank loans may be federally guaranteed, such as SBA loans or the U.S. Treasury's Small Business Lending Fund, which may increase availability of bank credit for small businesses.[22]

Other Lending Options

- *Peer-to-peer (P2P) lending*, which matches interested lenders with borrowers over the Internet and offers an alternative to bank financing due to some flexibility in pricing terms.[23]
- Personal and business *credit card debt*, which the SBA reports makes up roughly 7% of all startup capital.[24]
- *State-administered business assistance programs*, such as those administered by the Department of Economic Opportunity.[25]

Capital Markets

- *Registered offerings*, which are cost-prohibitive for small or startup businesses. Recent surveys estimated the average initial regulatory costs for an initial public offering (IPO) averaged $2.5 million, with ongoing annual compliance costs of $1.5 million.[26]
- *Exempt offerings* (such as private placements, Rule 504, Rule 505, Rule 506), although varying restrictions on general solicitation and advertising, resale, and investor quantity and experience, significantly limit the offerings and may also not be suitable for startups and small businesses.[27]
- The *angel investment* market, which has been on a gradual upward trend since 2012 and has been shifting to later-stage investments.[28]
- *Venture capital* (VC), which has remained relatively flat since 1999-2001, and is almost evenly split in terms of early-stage, expansion, and later-stage investments.[29] VC tends to be selective as to geography and industry niche (e.g., Silicon Valley tech firms), and often expects significant control rights over the startup company and specific growth benchmarks.[30] The research findings on the failure rate of VC-backed businesses in the U.S. vary, ranging from industry estimates of 25-30%, to as high as 75% by one business academic.[31]

Title III of the Jumpstart Our Business Startups (JOBS) Act – Equity Crowdfunding

In 2012, Congress enacted the Jumpstart Our Business Startups (JOBS) Act in an effort to ease the funding gap and regulatory burdens faced by startups and small businesses in connection with capital formation, especially for relatively small-dollar amounts.[32] In particular, Title III of the JOBS Act (Title III) created a new registration exemption from the '33 Act to permit the issuance, offer, and sale of up to $1 million of crowdfunding securities in a 12-month period, subject to specified requirements for issuers

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[22] U.S. DEPARTMENT OF THE TREASURY, *SBLF Helps Lenders Increase Small Business Loans by $14 Billion,* http://www.treasury.gov/connect/blog/Pages/SBLF-Helps-Lenders-Increase-Small-Business-Loans-by-$14-Billion.aspx

[23] The SEC generally requires P2P lenders to register their offerings under the '33 Act. Additionally, P2P lending may be subject to oversight by other federal and state financial regulatory agencies. *See* Karen Gordon Mills and Brayden McCarthy, *The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game*, Harvard Business School Working Paper 15-004 (Jul. 22, 2014), at http://www.hbs.edu/faculty/Publication%20Files/15-004_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf

[24] SBA Small Business Finance, p. 1.

[25] DEO administers several loan programs under ch. 288, F.S., designed to stimulate business activity and to expand economic opportunity, including the Rural Community Development Revolving Loan Program, the Economic Gardening Business Loan Pilot Program, and the Microfinance Loan Program, which the Legislature created in 2014 (ch. 2014-218, Laws of Fla.).

[26] *See* IPO Task Force, *Rebuilding the IPO On-Ramp*, at 9 (Oct. 20, 2011), *available at* http://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf.

[27] SEC Proposed Regulation Crowdfunding, pp. 319-324.

[28] SBA Small Business Finance (Feb. 2014), p. 2.

[29] *Id.*

[30] SEC Proposed Regulation Crowdfunding, p. 331.

[31] Deborah Gage, *The Venture Capital Secret: 3 Out of 4 Start-Ups Fail*; THE WALL ST. JOURNAL (Sept. 20, 2012), http://www.wsj.com/articles/SB10000872396390443720204578004980476429190

[32] The JOBS Act was signed into law on April 5, 2012. Pub. L. No. 112-106, 126 Stat. 306 (2012) (codified at various sections of 15 U.S.C.).

and intermediaries and investor limitations. Title III provides that individual investments are limited to 1) the greater of $2,000 or 5% of the investor's annual income or net worth, if annual income or net worth is less than $100,000; and 2) 10% of the investor's annual income or net worth (not to exceed a total investment of $100,000), if annual income or net worth is over $100,000.

Unlike other securities exemptions, Title III permits the fundraiser (*issuer*) to advertise and solicit sales of securities from the general public and to sell the securities to non-accredited investors without first registering with the SEC or other regulatory authority. Title III also allows *intermediaries* - either registered broker-dealers or a new Internet-based platform entity (funding portals) – to facilitate the online offer or sale of securities, subject to certain requirements, including registering with "with any applicable self-regulatory organization" as defined as in the 1934 Securities Exchange Act. The SEC's proposed rule provides that this self-regulatory organization is FINRA, which is the only registered national securities association.[33] If the Title III conditions are met, funding portals are exempt from having to also register with the SEC.

Certain companies are not eligible to use the Title III exemption, such as non-U.S. companies, companies that already are SEC reporting companies, certain investment companies, and as determined by SEC rule. Title III also includes a disqualification provision under which the exemption is unavailable if the issuer or related persons were subject to certain disqualifying events, such as being subject to a state financial regulatory final order barring the individual from the financial industry or a criminal conviction involving the purchase or sale of securities or false filings with the SEC.

Intermediaries (whether broker-dealers or funding portals) are required to comply with certain due diligence requirements and Title III's investor protections, including:

- Providing investors with disclosures and education materials,
- Conducting background checks on the issuer and related persons to ensure they are not subject to disqualification,
- Ensuring investor funds are escrowed, and released only when the target offering amount is reached, and
- Protecting the privacy of information collected from investors, and ensure that promoters and finders are not compensated for providing potential investors' personal identifying information,

Title III is a brief federal statutory framework, and requires the SEC to write significant implementing rules and to issue studies to facilitate capital formation, disclosure, and registration requirements.

SEC Rulemaking for Title III National Equity Crowdfunding

Many of the Title III requirements must be implemented by SEC rule. Title III directed the SEC to write rules within 270 days of enactment, i.e., by December 31, 2012. However, it was not until October 23, 2013 that the SEC published proposed rules ("Regulation Crowdfunding") and sought public comment.[34] Since the notice and comment period of the proposed rules, the SEC has not yet finalized them. Recently, the SEC released a rulemaking agenda indicating a target date of October 2015 to adopt final rules to implement Title III.[35] The federal rules will then require an additional 60 days of publication in the Federal Register before becoming law, which means it is more likely that national equity crowdfunding will not legally begin until early 2016.

[33] SEC Proposed Regulation Crowdfunding §227.400.

[34] SEC Release No. 33-9470; 34-70741 (Oct. 23, 2013) (Proposed Regulation Crowdfunding), available at http://www.sec.gov/rules/proposed/2013/33-9470.pdf

[35] EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, RIN 3235-AL37, at: http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3235-AL37

The SEC has advised that no Title III (interstate) crowdfunding is permitted until the SEC's rules are finalized; specifically, one cannot operate a crowdfunding intermediary or funding portal unless registered in accordance with the final rules.[36]

Currently, the only legally authorized national equity crowdfunding is under Title *II* of the JOBS Act, which is limited to accredited investors.[37] "Accredited investors" are defined in Rule 501 of Regulation D to include banks, insurance companies, or individuals and entities with specified income and net worth levels. A natural person with an individual net worth of over $1,000,000 (not including the value of a primary residence), an individual income in excess of $200,000 in each of the two most recent years, or a joint income of $3,000,000 in each of those two years, is considered an accredited investor.[38]

The Intrastate Exemption & State Crowdfunding Legislation

In light of the SEC's significant delay in implementing Title III national equity crowdfunding, a number of states have crafted *intrastate* crowdfunding exemptions, based on the federal intrastate exemption in §3(a)(11) of the '33 Act.[39] Section 3(a)(11) exempts "any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within such State or Territory." This exemption recognizes that state, not federal, regulation is more appropriate for an issuer that only offers and sells securities within one state and does most of its business within that state.

Issuers may also rely on the SEC's Rule 147, known as the "safe harbor" rule, which provides specific guidance on §3(a)(11) offerings.[40] For example, Rule 147 specifies that at least 80% of the gross revenues and its subsidiaries (on a consolidated basis) be derived from the subject state in order to be deemed "doing business within a state or territory." Rule 147 states that the legislative history of §3(a)(11) suggests that "the exemption was intended to apply only to issues genuinely local in character, which in reality represent local financing to local industries, carried out through local investment."

Unlike the Title III crowdfunding exemption, §3(a)(11) does not limit the size of the offering, and unlike several other exemptions, §3(a)(11) does not limit the number of investors or require that they be accredited. However, it is noted that §3(a)(11) is strictly and narrowly construed, and if any of the securities are offered or sold to even one out-of-state person, the exemption may be lost and the company could be in violation of the '33 Act.[41] It is also important to note that §3(a)(11) only provides an exemption from federal registration, but does not provide immunity from the antifraud or civil liability provisions of the federal securities laws, including investor rescission. States may still require registration for purely intrastate offerings involving a general solicitation of investors.

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[36] U.S. SECURITIES & EXCHANGE COMMISSION, Information Regarding the Use of Crowdfunding Exemption in the JOBS Act, at http://www.sec.gov/spotlight/jobsact/crowdfundingexemption.htm. *See also* JOBS Act Frequently Asked Questions About Crowdfunding Intermediaries, at http://www.sec.gov/divisions/marketreg/tmjobsact-crowdfundingintermediariesfaq.htm

[37] Title **II** of the JOBS Act was implemented by final SEC rule on July 10, 2013. SEC Release No. 33-9415, at: http://www.sec.gov/rules/final/2013/33-9415.pdf . It is also noted that on March 25, 2015, the SEC finalized rules to implement Title **IV** of JOBS to create equity crowdfunding under Regulation A+, which allows two tiers of offerings of up to $20 million and $50 million. It is anticipated that Regulation A + will go into effect sometime in June 2015. *See* U.S. SECURITIES & EXCHANGE COMMISSION, *SEC Adopts Rules to Facilitate Smaller Companies' Access to Capital*, at http://www.sec.gov/news/pressrelease/2015-49.html#.VR1gMqMpDct

[38] 17 CFR § 230.501(a)(5-6). Issuers may be exempt from the '33 Act if they sell securities to only accredited investors in accordance with Rules 505 or 506 of Regulation D.

[39] 15 U.S.C. §77c(a)(11).

[40] 17 CFR §230.147.

[41] U.S. SECURITIES & EXCHANGE COMMISSION, *Small Business and the SEC*, http://www.sec.gov/info/smallbus/qasbsec.htm#intrastate

Currently, seventeen states and the District of Columbia have some form of intrastate crowdfunding law in place (whether by statute, regulation, or administrative order), to exempt the issuer and offering from state registration, if certain regulatory requirements are met. Many of these exemptions were only recently enacted or became effective in the latter half of 2014, and intrastate crowdfunding legislation or rulemaking has been introduced and pending in more than a dozen other states.[42] While these intrastate exemptions are based on §3(a)(11) of the '33 Act, they also appear to be based Title III's goals of easing regulatory burdens and promoting small business growth. Accordingly, these "hybrid" intrastate crowdfunding exemptions incorporate elements of Title III to varying degrees; for example, while most states have capped the total offering amount at $1 million to match Title III of JOBS, some have allowed issuances up to $2 million, or have income or net worth requirements for investors different than those found in Title III.[43]

The cost of raising capital under an intrastate crowdfunding campaign of identical offering amount is unknown, given the infancy and wide variation of existing state intrastate crowdfunding exemptions. However, the SEC has estimated that the cost of raising capital under Title III of JOBS is approximately $39,000 (in fees for accountants, attorneys, and funding portal) for a $100,000 national equity crowdfunding campaign, and more than $150,000 to raise $1 million. The SEC estimates that initial development of an intermediary platform could cost an additional $250,000 to $600,000, and would likely include establishing functionalities such as investor account opening procedures, electronic delivery, and the maintenance and transmission of investor funds.[44]

Additionally, data on the success of these intrastate offerings or regarding regulatory or enforcement trends is not yet available.[45]

The Internet and Intrastate Offerings

Questions have arisen as to the applicability of the intrastate exemption to crowdfunding offers and sales conducted through the Internet, which can be accessed across state lines. SEC guidance from 2008 has suggested that internet-based offerings would be deemed interstate, not intrastate, in nature if out-of-state investors are given access to such offerings.[46] Some securities law experts have questioned the appropriateness and effectiveness of using §3(a)(11) for internet-based offerings, stating that the intrastate exemption is "fraught with both technical and subtle traps for issuers"[47] and may not be useful to issuers making a broad solicitation over the Internet.[48]

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[42] NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, *Intrastate Crowdfunding Resource Center*, http://www.nasaa.org/industry-resources/corporation-finance/instrastate-crowdfunding-resource-center/ (last viewed Feb. 10, 2015).

[43] Indiana, Michigan, and Wisconsin permit up to a $2 million offering of crowdfunding securities if the issuer has audited financial statements. The D&O Diary, *Some States have Sidestepped the JOBS Act's Burdensome Crowdfunding Rules* (May 15, 2014), at http://www.dandodiary.com/2014/05/articles/securities-litigation/some-states-have-sidestepped-the-jobs-acts-burdensome-crowdfunding-rules/

[44] SEC Proposed Regulation Crowdfunding, pp. 442-454.

[45] A recent notable example of a state enforcement action against a *rewards-based* crowdfunding project is the State of Washington's Attorney General's lawsuit against a Kickstarter campaign promising, but failing to deliver, a deck of cards and other promotional gifts, in return for cash donations. The complaint alleged a violation of Washington State's unfair and deceptive trade practices law. Ángel González, *AG sues Kickstarter project that didn't deliver*, THE SEATTLE TIMES (May 1, 2014), http://www.seattletimes.com/business/ag-sues-kickstarter-project-that-didnrsquot-deliver/

[46] U.S. SECURITIES & EXCHANGE COMMISSION, *The SEC Guide to Broker-Dealer Registration* (Apr. 2008), http://www.sec.gov/divisions/marketreg/bdguide.htm (last viewed Feb. 10, 2015), stating "information posted on the Internet that is accessible by persons in another state would be considered an interstate offer of securities or investment services that would require Federal broker-dealer registration."

[47] Stuart R. Cohn, *The New Crowdfunding Registration Exemption: Good Idea, Bad Execution*, 64 FLA. L. REV. 1433 (2012). Available at: http://scholarship.law.ufl.edu/flr/vol64/iss5/9

[48] Thomas Lee Hazen, *Crowdfunding or Fraudfunding? Social Networks and the Securities Laws – Why the Specially Tailored Exemption Must Be Conditioned on Meaningful Disclosure*, 90 N.C.L. REV. 1735 (2012). Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1954040

Issuers and intermediaries conducting online crowdfunding issuances, even under the auspices of an state law referencing the federal exemption, must ensure they comply with the substantive requirements of the federal exemption, or risk running afoul of the federal securities law for illegal, unregistered transactions.[49] The North American Securities Administrators Association (NASAA) recently suggested minimum safeguards, such as password access upon residency verification, or other attestations or certifications of investor residency prior to sale.[50]

On April 10, 2014, the SEC issued interpretive guidance regarding §3(a)(11) and the Internet.[51] The SEC indicated that use of a third-party Internet portal to promote an offering to residents of a single state would not violate the intrastate exemption, if the portal implemented "adequate measures," such as disclaimers, restrictive legends, and limited access to information about specific investment opportunities to persons who confirm they are residents of the relevant states by way of zip codes or address verification. Although the SEC's interpretive ruling is not conclusive, issuers generally would not be able to use popular social media platforms (such as Facebook, Twitter, or LinkedIn) to promote an intrastate crowdfunding offering, because these sites can be indiscriminately accessed by non-Florida residents. In addition, the issuer would likely need to ensure that an investor does not continue to use the portal after moving out of state.[52]

Investor Protections

A primary investor protection concern regarding equity crowdfunding is that investors may not adequately appreciate the high risk of loss when investing in a startup company. According to U.S. Department of Labor statistics, almost half of all new businesses do not survive after their fifth year of operation.[53] Survival rates have changed little over time, even before, during, and after the recent recession.

An offering under several other securities exemptions, such as Regulation D, requires investors to be accredited in order to invest in a start-up company. On the other hand, Title III and almost all current intrastate crowdfunding exemptions allow all types of investors to participate in crowdfunding offerings, including individuals with modest incomes or net worth who may not have the financial sophistication or means to avoid or absorb a loss of investment.

Because non-accredited, intrastate equity crowdfunding is only in its infancy in several states, no data exists for average rates of return or loss. However, one study reviewed return rates in angel investments, finding a "kind of feast-or-famine universe," where only the top 10% of angel investors garnered 75% of the total returns. Even where angel investors spread their risk through a portfolio strategy, the top 10% of angel investors still earned 50% of the total gains. However, the strategies and resources (time, due diligence, legal and accounting advice, etc.,) necessary for such investments are mostly unavailable for non-accredited investors, leaving the possibility that rates of return could be even less favorable in equity crowdfunding offerings.[54] Additionally, investments in these startup companies are illiquid, and investors cannot resell their investments until such investments are executed on an exchange or in a public market. It is unknown the extent to which a secondary market for intrastate crowdfunding securities will be readily available.

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[49] As noted above, national crowdfunding to unaccredited investors is not permitted until the SEC's Title III rules are final.

[50] Letter from NASAA to the National Conference of State Legislatures (Jan. 17, 2014), on file with the Insurance & Banking Subcommittee staff. NASAA is the oldest international organization devoted to investor protection and consists of the securities regulators in the 50 states, the District of Columbia, Mexico, Puerto Rico and the U.S. Virgin Islands.

[51] *See* Questions 141.03-141.05 (issued April 10, 2014), *available at* http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm

[52] Elizabeth J. Chandler, *SEC Staff Releases Compliance and Disclosure Interpretations Related to Intrastate Crowdfunding*, THE NATIONAL LAW REVIEW (Apr. 14, 2014), http://www.natlawreview.com/article/sec-securities-and-exchange-commission-staff-releases-compliance-and-disclosure-inte

[53] U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, *Business Employment Dynamics, Chart 3: Survival rates of establishments*, at: http://www.bls.gov/bdm/entrepreneurship/entrepreneurship.htm

[54] Michael B. Dorff, *The Siren Call of Equity Crowdfunding* (Sept. 13, 2013). Available at SSRN: http://ssrn.com/abstract=2325634

NASAA has identified internet fraud (including social media and crowdfunding) as a persistent threat facing investors in 2015.[55] NASAA and the OFR have issued investor alerts regarding crowdfunding and investment scams, respectively.[56] The SEC has also issued an investor alert regarding social media and investing.[57]

Effect of the Bill

The bill amends the Act to create a new equity crowdfunding exemption from state securities registration. The bill requires the issuer to file a notice with the OFR before conducting an offering. These proposed securities may be generally advertised to the public (such as over the Internet), and may be sold through an intermediary, who is required to register with the OFR. The bill provides for the exempt offer and sale of up to $1 million of unregistered securities per offering, and sets forth terms and conditions for issuers and intermediaries offering and selling such securities. The bill matches the income and investment caps set out in Title III, so that individual investments are limited to 1) the greater of $2,000 or 5% of the investor's annual income or net worth, if annual income or net worth is less than $100,000; and 2) 10% of the investor's annual income or net worth (not to exceed a total investment of $100,000), if annual income or net worth is over $100,000.

The bill clarifies that an offer or sale of a security under the crowdfunding exemption is exempt from the registration provisions of the Act, but like other exempt securities, crowdfunding securities remain subject to the Act's antifraud and boiler room provisions. The bill clarifies that *unlike* the other exempt transactions of s. 517.061, F.S., the crowdfunding exemption is not self-executing, so that crowdfunding issuers must demonstrate compliance with the requirements of this new exemption.

The securities must meet all of the requirements of the federal intrastate exemption, §3(a)(11), and the safe harbor rule, Rule 147, described above. The bill contains many similar or identical requirements of Title III of the JOBS Act.

Issuer[58]

- The bill requires the issuer to be a for-profit business entity formed under Florida law, be registered with the Secretary of State, maintain its principal place of business in the state, and derive its revenues primarily from operations in the state.
- As with Title III of JOBS, the bill prohibits investment companies and certain companies that are required to report to the SEC.
    - The bill also disqualifies directors, officers, and 20% shareholders of the issuer based on s. 517.1611, F.S., or Rule 506(d) of the '33 Act.
    - The bill also prohibits issuers with undefined business operations, that lack business plans and stated investment goals, or that have plans to engage in a merger or acquisition with an unspecified business entity.[59]

[55] NASAA, New Products in Classic Schemes Identified as Top Investor Threats (Nov. 12, 2014), at http://www.nasaa.org/33485/new-products-classic-schemes-identified-top-investor-threats/ .

[56] NASAA Investor Advisory, http://www.nasaa.org/12842/informed-investor-advisory-crowdfunding/; OFR, *Consumer Alert: Common Investment Scam Red Flags*, http://flofr.com/PressReleaseDetail.aspx?id=4371

[57] U.S. Securities & Exchange Commission, *Updated Investor Alert: Social Media & Investing – Avoiding Fraud*, http://www.investor.gov/news-alerts/investor-alerts/investor-alert-social-media-investing-avoiding-fraud

[58] Current law defines "issuer" as "any person who proposed to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer." Section 517.021(14), F.S.

[59] These development-stage companies are known as "blank check companies" and often fall within the SEC's definition of "penny stocks" or are considered "microcap stocks." *See* U.S. SECURITIES & EXCHANGE COMMISSION, *Blank Check Company*, at http://www.sec.gov/answers/blankcheck.htm

- The issuer must submit a $200 filing fee and a notice-filing to OFR, containing specified information, and keep the notice-filing current with OFR. The bill requires the notice filing to contain certain information about the issuer, such as the amount of the offering and the intermediary's website address. The bill also specifies that fee revenue will be deposited into the Regulatory Trust Fund within the OFR.
- As with Title III of JOBS, the bill requires the issuer to execute an escrow agreement with a federally insured financial institution to deposit and hold investor funds.
    - The bill requires that escrowed funds be released only when the target offering amount is reached, and the issuer must allow an investor to cancel an investment within 3 days of the offering's deadline.
- Like Title III of JOBS, the bill requires issuers to provide a *disclosure statement* containing specified information to potential investors.
    - The issuer must also provide a copy of the disclosure statement to OFR at the time it files a notice with OFR.
    - The disclosure statement must include certain financial disclosures (depending on the target amount of the offering) and standard language that the investor must accept to affirm his or her knowledge and understanding of the risks involved with crowdfunding.[60]

Intermediary

The intermediary may be either a natural person who resides in Florida or a legal entity registered with the Secretary of State to do business in Florida. The bill creates a definition of "intermediary" to mean a natural person residing in this state, or legal entity registered with the Secretary of State to do business in this state, that facilitates the offer or sale of securities under the crowdfunding exemption.

The bill contains several requirements that are similar or identical to requirements in Title III. The bill:

- Prohibits intermediaries from engaging in crowdfunding transactions if certain affiliated persons are disqualified based on their regulatory and criminal backgrounds.
- Requires intermediaries to conduct a background check and regulatory enforcement history check on each officer, director, and persons holding more than 20% of the issuer's outstanding equity.
- Requires intermediaries to provide specified basic information on its website, including its business plan, a description of the escrow agreement for investor funds, and whether its financial information has been audited by an independent certified public accountant.
- Requires intermediaries to conduct certain due diligence requirements, such as:
    - Verifying that potential investors are Florida residents in order to comply with the intrastate requirement,
    - Obtaining affidavits from investors stating their investments are consistent with the Act's income requirements, and require investors to certify in writing that they acknowledge the risks of the investment,
    - Depositing and releasing investor funds in accordance with the Act's escrow requirements,
    - Providing monthly updates to investors after the offering's first full month,
    - Directing investor funds to the qualified third-party designated in the escrow agreement, and
    - Taking reasonable steps to protect investors' personal information, as required by s. 501.171, F.S.[61]
- Prohibits an intermediary from:
    - Offering investment advice or recommendations,
    - Soliciting purchases, sales, offers (or compensate others to solicit) to buy the securities offered on its website,
    - Holding, managing, possessing, or otherwise handling investor funds or securities, and
    - Compensating certain third parties for providing personal identifying information of potential investors.

[60] Similar or identical language appears in other state crowdfunding exemptions, e.g., Mich. Comp. Laws §451.2002a(1)(h).

[61] Section 501.171, F.S., is the Florida Information Protection Act of 2014, which requires "covered entities" to. give notice of a security breach to the Department of Legal Affairs. Ch. 2014-189, Laws of Fla.

Intermediary Registration

- The bill requires intermediaries to be registered dealers or to register as an intermediary, and creates a new registration requirement for the latter within s. 517.12, F.S. The bill requires a $200 filing fee, a consent to process, and information determined by commission rule as part of the application. The bill also specifies that fee revenue will be deposited into the Regulatory Trust Fund within the OFR.

Books and Records

The bill amends s. 517.121, F.S., to require intermediaries to be subject to the Act's requirements to maintain books and records and OFR examinations.

B. SECTION DIRECTORY:

Section 1. Amends s. 517.021, F.S., relating to definitions.

Section 2. Amends s. 517.061, F.S., relating to exempt transactions.

Section 3. Creates s. 517.0611, F.S., relating to the Florida Intrastate Crowdfunding Act.

Section 4. Amends s. 517.12, F.S., relating to registration of dealers, associated persons, and investment advisers.

Section 5. Amends s. 517.121, F.S., relating to books and records requirements; examinations.

Section 6. Amends s. 626.9911, F.S., relating to definitions.

Section 7. Provides a nonrecurring appropriation for the 2015-2016 fiscal year.

Section 8. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has a positive, yet indeterminate, fiscal impact to state revenues. The bill requires issuers to pay notice-filing fees ($200) and requires intermediaries to pay registration fees ($200), which will be deposited into the OFR's Regulatory Trust Fund. However, the anticipated number of notice-filing and registration applications is unknown at this time.[62]

2. Expenditures:

The bill appropriates $120,000 in nonrecurring funds from the Regulatory Trust Fund within the OFR to implement provisions of the bill. The OFR indicates that it is difficult to anticipate the full impact of this program change, but that provisions of the bill are anticipated to create increased workload for the OFR. The OFR noted that additional IT support, increased storage, and modifications to the Regulatory Enforcement and Licensing (REAL) system would be necessary to implement provisions of the bill relating to the integration of notice-filings by issuers and applications by intermediaries. The OFR estimates the cost to perform the necessary IT upgrades to be approximately $63,150. The bill also authorizes the Financial Services Commission to adopt rules creating electronic forms for notice-filings and applications.[63]

[62] Office of Financial Regulation, Agency Analysis of 2015 House Bill 275 (Mar. 18, 2015)
[63] *Id.* at pp. 5-6.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. It is unknown how many issuers and intermediaries will utilize this exemption.

The bill may provide an additional source of capital for new businesses in Florida. As discussed above, however, the rates of return or loss for crowdfunding investors are also unknown.

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:

The OFR notes that the SEC has not yet promulgated final rules implementing interstate crowdfunding under Title III of the JOBS Act, and notes that such final rules could conflict with provisions of the bill or rules adopted under it.[64]

B. RULE-MAKING AUTHORITY:

The bill grants authority to the Financial Services Commission to adopt rules for notice-filing and application forms, procedures, the deposit of notice-filing and registration fees, certain financial reporting requirements, intermediary requirements for reducing the risk of fraud, prohibited intermediary activities, and books and records requirements for intermediaries.

C. DRAFTING ISSUES OR OTHER COMMENTS:

An amendment is anticipated to incorporate additional investor disclosures required under the JOBS Act, to clarify the issuer notice-filing and intermediary registration requirements, and to clarify the OFR's authority to take disciplinary action against issuers and intermediaries.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 31, 2015, the Government Operations Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

[64] *Id.* at p. 7.

- Specified that fee revenue collected for issuer application filings shall be deposited into the Regulatory Trust Fund within the Office of Financial Regulation.
- Specified that fee revenue collected for intermediary application filings shall be deposited into the Regulatory Trust Fund within the Office of Financial Regulation.
- Provided a nonrecurring appropriation of $120,000 from the Regulatory Trust Fund 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 the offer or sale of securities; amending s. 517.021, F.S.; conforming a cross-reference; defining the term "intermediary" for purposes of the Florida Securities and Investor Protection Act; amending s. 517.061, F.S.; exempting offers or sales of securities by certain issuers from registration requirements; creating s. 517.0611, F.S.; providing a short title; exempting the intrastate offering and sale of certain securities from certain regulatory requirements; providing applicability; providing registration and reporting requirements for issuers and intermediaries offering such securities; providing for deposit of fees; limiting the aggregate amount of sales of such securities within a specified period; limiting the aggregate amount of sales to specified investors; requiring a qualified third party to hold certain funds in escrow; authorizing the Financial Services Commission to adopt rules; amending s. 517.12, F.S.; providing registration requirements for an intermediary; conforming a cross-reference; amending s. 517.121, F.S.; requiring an intermediary to comply with specified recordkeeping requirements; amending s. 626.9911, F.S.; conforming a cross-reference; providing an appropriation; providing an effective date.

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

Section 1. Subsection (9) of section 517.021, Florida Statutes, is amended, subsections (13) through (23) are renumbered as subsections (14) through (24), respectively, and a new subsection (13) is added to that section, to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(9) "Federal covered adviser" means a person who is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940. The term "federal covered adviser" does not include any person who is excluded from the definition of investment adviser under subparagraphs (14)(b)1.-8. ~~(13)(b)1.-8.~~

(13) "Intermediary" means a natural person residing in the state or a corporation, trust, partnership, association, or other legal entity registered with the Secretary of State to do business in the state, which facilitates the offer or sale of securities under s. 517.0611.

Section 2. Section 517.061, Florida Statutes, is amended to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing

and does not require any filing with the office before ~~prior to~~ claiming the ~~such~~ exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(1) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(2) By or for the account of a pledgeholder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(3) The isolated sale or offer for sale of securities when made by or on behalf of a vendor not the issuer or underwriter of the securities, who, being the bona fide owner of such securities, disposes of her or his own property for her or his own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any

provision of this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a vendor of securities not the issuer or underwriter of the securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (11)(a)1., 2., 3., and 4. and paragraph (11)(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(1) of the Securities Act of 1933, as amended.

For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer, shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with respect to any securities of the issuer which she or he has owned beneficially for at least 1 year.

(4) The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus.

(5) The issuance of securities to such equity security holders or other creditors of a corporation, trust, or partnership in the process of a reorganization of such corporation or entity, made in good faith and not for the

purpose of avoiding the provisions of this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

(6) Any transaction involving the distribution of the securities of an issuer exclusively among its own security holders, including any person who at the time of the transaction is a holder of any convertible security, any nontransferable warrant, or any transferable warrant which is exercisable within not more than 90 days of issuance, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.

(7) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined by the Investment Company Act of 1940, pension or profit-sharing trust, or qualified institutional buyer as defined by rule of the commission in accordance with Securities and Exchange Commission Rule 144A (17 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting in its individual or fiduciary capacity; provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(8) The sale of securities from one corporation to another

corporation provided that:

(a) The sale price of the securities is $50,000 or more; and

(b) The buyer and seller corporations each have assets of $500,000 or more.

(9) The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate statutes in connection with mergers, share exchanges, consolidations, or sale of corporate assets.

(10) The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(11)(a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of

the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Prior to the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information.

4. No person defined as a "dealer" in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. Any relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

2. Any trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any corporation specified in subparagraph 3. collectively

have more than 50 percent of the beneficial interest (excluding contingent interest).

3. Any corporation or other organization of which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. Any purchaser who makes a bona fide investment of $100,000 or more, provided such purchaser or the purchaser's representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.

5. Any accredited investor, as defined by rule of the commission in accordance with Securities and Exchange Commission Regulation 230.501 (17 C.F.R. s. 230.501).

(c)1. For purposes of determining which offers and sales of securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:

a. Offers or sales of securities occurring more than 6 months prior to an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

b. Offers or sales of securities occurring at any time after 6 months from an offer or sale made pursuant to this

subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

2. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part of the same offering, depending on the particular facts and circumstances in each case. The commission may adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for purposes of this subsection.

(d) Offers or sales of securities made pursuant to, and in compliance with, any other subsection of this section or any subsection of s. 517.051 shall not be considered part of an offering pursuant to this subsection, regardless of when such offers and sales are made.

(12) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state at a profit to such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.

(13) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered

pursuant to the provisions of s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities on order of, and as agent for, another by any person other than a dealer so registered; and provided, further, that such purchase or sale is not directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violation or evading any provision of this chapter.

(14) The offer or sale of shares of a corporation which represent ownership, or entitle the holders of the shares to possession and occupancy, of specific apartment units in property owned by such corporation and organized and operated on a cooperative basis, solely for residential purposes.

(15) The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries.

(16) The sale by or through a registered dealer of any securities option if at the time of the sale of the option:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved

or adopted by the commission; or

(b) Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the office; and

(c) The option is not sold by or for the benefit of the issuer of the underlying security; and

(d) The underlying security may be purchased or sold on a recognized securities exchange or is quoted on the National Association of Securities Dealers Automated Quotation System; and

(e) Such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provisions of this chapter.

(17)(a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended;

4. Securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the Securities Act of 1933 and is not subject to any registration or filing requirements under this act, which appear in any list of securities dealt in on any stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, and which securities have been listed or approved for listing upon notice of issuance by such exchange, and also all securities senior to any securities so listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by companies any stock of which is so listed or approved for listing upon notice of issuance, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided for herein does not apply when the securities are suspended from listing approval for listing or trading.

(b) The exemption provided in this subsection does not apply if the sale is made for the direct or indirect benefit of an issuer or controlling persons of such issuer or if such securities constitute the whole or part of an unsold allotment to, or subscription or participation by, a dealer as an underwriter of such securities.

(c) This exemption shall not be available for any securities which have been denied registration pursuant to s. 517.111. Additionally, the office may deny this exemption with

reference to any particular security, other than a federal covered security, by order published in such manner as the office finds proper.

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(17).

(19) Other transactions defined by rules as transactions exempted from the registration provisions of s. 517.07, which rules the commission may adopt from time to time, but only after a finding by the office that the application of the provisions of s. 517.07 to a particular transaction is not necessary in the public interest and for the protection of investors because of the small dollar amount of securities involved or the limited character of the offering. In conjunction with its adoption of such rules, the commission may also provide in such rules that persons selling or offering for sale the exempted securities are exempt from the registration requirements of s. 517.12. No rule so adopted may have the effect of narrowing or limiting any exemption provided for by statute in the other subsections of this section.

(20) Any nonissuer transaction by a registered associated person of a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided, at the time of the transaction:

(a) The issuer of the security is actually engaged in

business and is not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, any unidentified person;

(b) The security is sold at a price reasonably related to the current market price of the security;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(d) A nationally recognized securities manual designated by rule of the commission or order of the office or a document filed with the Securities and Exchange Commission that is publicly available through the commission's electronic data gathering and retrieval system contains:

1. A description of the business and operations of the issuer;

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(e) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:

1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

2. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

3. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(21) The offer or sale of a security by an issuer conducted in accordance with s. 517.0611.

Section 3. Section 517.0611, Florida Statutes, is created to read:

517.0611 Intrastate crowdfunding.—

(1) This section may be cited as the "Florida Intrastate Crowdfunding Act of 2015."

(2) Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption from registration requirements under this chapter.

(3) The offer or sale of securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United States Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, adopted pursuant to the Securities Act of 1933.

(4) An issuer must:

(a) Be a for-profit business entity formed under the laws of the state, be registered with the Secretary of State, maintain its principal place of business in the state, and derive its revenues primarily from operations in the state.

(b) Conduct transactions for the offering through a registered dealer or an intermediary registered under s. 517.12(20).

(c) Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, subject to the

reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d), or be a company with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

(d) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1611 or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933. Each director, officer, person occupying a similar status or performing a similar function, or person holding more than 20 percent of the shares of the issuer, is subject to this requirement.

(e) File a notice of the offering with the office, in writing or electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The filing fee shall be deposited into the Regulatory Trust Fund of the Department of Financial Services, Office of Financial Regulation. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. The office may revoke the filing of a notice under this paragraph if payment for the filing fee is by check or electronic

transmission of funds that is dishonored by the financial institution upon which the funds are drawn. A notice is effective upon receipt by the office of the form and filing fee, and the notice may be terminated by filing with the office a notice of such termination. The notice and offering expire 12 months after filing the notice with the office. The notice must:

1. Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary, in reliance upon the exemption provided by this section.

2. Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

3. Contain the names and addresses of the issuer, all persons who will be involved in the offer or sale of securities on behalf of the issuer, and the federally insured financial institution authorized to do business in the state, in which investor funds will be deposited.

4. Include documentation verifying that the issuer is organized under the laws of the state and authorized to do business in the state.

5. Include the intermediary's website address.

6. Include the target offering amount.

7. Include an attestation that each control person of the issuer is not subject to disqualification under paragraph (c).

A notice filed by an issuer under this section shall be

summarily suspended by the office if the issuer fails to provide to the office, within 30 days after a written request from the office, information required by this section or rules adopted under this section. The summary suspension shall remain in effect until the issuer submits the requested information to the office, pays a fine as prescribed by s. 517.221(3), and a final order is entered. For purposes of s. 120.60(6), failure to provide such information constitutes an immediate and serious danger to the public health, safety, and welfare. If the issuer fails to provide the requested information after 90 days, the office shall revoke the filing of the notice.

(f) Amend the notice form within 30 days after any information contained in the notice becomes inaccurate for any reason. The commission may require, by rule, an issuer who has filed a notice under this section to file amendments with the office.

(g) Execute an escrow agreement with a federally insured financial institution authorized to do business in the state for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount.

(h) Allow an investor to cancel a commitment to invest within 3 business days before the offering deadline.

(i) Provide a disclosure statement to potential investors, with a copy to the office at the time of filing the notice,

containing material information about the issuer and the offering, including:

1. The name, legal status, physical address, and website address of the issuer.

2. The names of the directors, officers, and any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the shares of the issuer.

3. A description of the business of the issuer and the anticipated business plan of the issuer.

4. A description of the stated purpose and intended use of the proceeds of the offering.

5. The target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount.

6. The price to the public of the securities or the method for determining the price.

7. A description of the ownership and capital structure of the issuer, including terms of the securities and how the terms may be modified.

8. A description of the financial condition of the issuer.

a. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of $100,000 or less, the description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be

certified by the principal executive officer of the issuer as true and complete in all material respects.

b. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $100,000, but not more than $500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer.

c. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $500,000, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

9. The following statement in boldface, conspicuous type on the front page of the disclosure statement:

These securities are offered and will be sold in reliance upon an exemption from the registration requirements of federal and Florida securities laws. Consequently, neither the Federal Government nor the State of Florida have reviewed the accuracy or completeness of any offering materials. In making an

investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

(j) File with the office and provide to investors through the intermediary annual reports of the results of operations and financial statements of the issuer, subject to additional requirements as the commission may establish by rule.

(5) An intermediary must:

(a)1. Be registered as a dealer in accordance with s. 517.12(6); or

2. Submit a nonrefundable filing fee of $200 and submit an application for registration as an intermediary in accordance with s. 517.12(20), in a format prescribed by commission rule, specifying that the intermediary will conduct business as an intermediary in furtherance of an offering in reliance upon the exemption provided in this section. The filing fee shall be deposited into the Regulatory Trust Fund of the Department of Financial Services, Office of Financial Regulation.

(b) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1611 or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933. Each director, officer, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the shares of the intermediary is subject to this requirement.

(c) Take measures, as established by commission rule, to reduce the risk of fraud. Such measures shall include obtaining a background check and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person.

(d) Provide basic information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The basic information shall include:

1. A description of the escrow agreement that the issuer has executed and the conditions for release of such funds to the issuer in accordance with the agreement and paragraph (4)(g).

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(e) Obtain a zip code or residence address from each

potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of the state.

(f) Obtain and verify, pursuant to commission rule, a valid Florida driver license number or identification card number from each investor, before purchase of a security, to confirm that the investor is a resident of the state.

(g) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (8).

(h) Deposit and release investor funds in escrow in accordance with paragraph (4)(g).

(i) Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each of sale of securities in the previous calendar month.

(j) Require each investor to certify in writing, and to include as part of such certification his or her signature, and his or her initials next to each paragraph of the certification, as follows:

I understand and acknowledge that:

I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can

afford the loss of my investment.

This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

The securities I am acquiring in this offering are illiquid and are subject to possible dilution. There is no ready market for the sale of the securities. It may be difficult or impossible for me to sell or otherwise dispose of the securities, and I may be required to hold the securities indefinitely.

I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.

By entering into this transaction with the issuer, I am affirmatively representing myself as being a Florida resident at the time this contract is formed, and if this representation is subsequently shown to be false, the contract is void.

651
652 If I resell any of the securities I am acquiring in
653 this offering to a person that is not a Florida
654 resident within 9 months after the closing of the
655 offering, my contract with the issuer for the purchase
656 of these securities is void.
657
658 (k) Require each investor to answer questions
659 demonstrating an understanding of the level of risk generally
660 applicable to investments in startups, emerging businesses, and
661 small issuers, and an understanding of the risk of illiquidity.
662 (l) Take reasonable steps to protect personal information
663 collected from investors, as required by s. 501.171.
664 (m) Prohibit its directors and officers from having any
665 financial interest in the issuer using its services.
666 (6) An intermediary may not:
667 (a) Offer investment advice or recommendations. A refusal
668 by an intermediary to post an offering that it deems to not be
669 credible or representing a potential for fraud shall not be
670 construed as an offer of investment advice or recommendation.
671 (b) Solicit purchases, sales, or offers to buy securities
672 offered or displayed on its website.
673 (c) Compensate employees, agents, or other persons for the
674 solicitation of purchases, sales, or offers to buy the
675 securities offered or displayed on its website.
676 (d) Hold, manage, possess, or otherwise handle investor

funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any potential investor.

(f) Engage in any other activities set forth by commission rule.

(7) The sum of all cash and other consideration received for sales of a security under this section may not exceed $1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption.

(8) Unless the investor is an accredited investor as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this subsection during the 12-month period preceding the date of such transaction may not exceed:

(a) The greater of $2,000 or 5 percent of the annual income or net worth of such investor, if the annual income and the net worth of the investor is less than $100,000.

(b) Ten percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor exceeds $100,000.

(9) All funds received from investors must be directed to the qualified third party designated to hold the funds and must

be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the third party designated to hold the funds to promptly refund the funds of the investor.

(10) The commission may adopt rules to administer this section and to protect investors who purchase securities under this section

Section 4. Subsection (20) of section 517.12, Florida Statutes, is renumbered as subsection (21) and amended, and a new subsection (20) is added to that section, to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(20) An intermediary that has filed a registration application in accordance with this subsection may facilitate the offer or sale of securities in accordance with s. 517.0611.

(a) A registration application must consist of any information required by commission rule, together with a consent to service of process and a nonrefundable filing fee of $200. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section.

(b) The office may issue a permit as evidence of the effectiveness of an intermediary's registration.

(21) ~~(20)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance

agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(22)(g) ~~517.021(21)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

Section 5. Subsections (1) and (2) of section 517.121, Florida Statutes, are amended to read:

517.121 Books and records requirements; examinations.—

(1) A dealer, investment adviser, branch office, ~~or~~ associated person, or intermediary shall maintain such books and records as the commission may prescribe by rule.

(2) The office shall, at intermittent periods, examine the affairs and books and records of each registered dealer, investment adviser, associated person, intermediary, or branch office notice-filed with the office, or require such records and reports to be submitted to it as required by rule of the commission, to determine compliance with this act.

Section 6. Paragraph (b) of subsection (4) of section 626.9911, Florida Statutes, is amended to read:

626.9911 Definitions.—As used in this act, the term:

(4) "Life expectancy provider" means a person who determines, or holds himself or herself out as determining, life expectancies or mortality ratings used to determine life

expectancies:

(b) In connection with a viatical settlement investment, pursuant to s. 517.021(24) ~~517.021(23)~~; or

Section 7. For the 2015-2016 fiscal year, the sum of $120,000 in nonrecurring funds from the Regulatory Trust Fund of the Department of Financial Services is appropriated to the Office of Financial Regulation for the purpose of implementing this act.

Section 8. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 617 Utility Projects
SPONSOR(S): Finance & Tax Committee; Goodson and others
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 1102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	11 Y, 1 N	Keating	Keating
2) Finance & Tax Committee	17 Y, 0 N, As CS	Pewitt	Langston
3) Regulatory Affairs Committee		Keating	Hamon

SUMMARY ANALYSIS

The bill establishes a new financing mechanism – "Utility Cost Containment Bonds" – available to an intergovernmental authority to finance or refinance, on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity (including the authority itself), projects related to water or wastewater service. The creation of this financing mechanism, referred to as securitization, is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible utility projects for these entities.

In summary, the financing mechanism created by the bill operates as follows:

- A "local agency" applies to the intergovernmental utility authority to finance the costs of an eligible project using "utility cost containment bonds."
- The intergovernmental utility authority adopts a "financing resolution" setting forth certain requirements for issuance of the bonds. (To finance the project, the intergovernmental utility authority may form a single-purpose limited liability company or, together with two or more of its members or other public agencies, may create a new single-purpose entity to perform the duties and responsibilities of the authority under the bill.)
- The bonds are secured by the revenues from a separate "utility project charge" stated on the bill of each present and future customer of the services specified in the financing resolution.
- This charge is imposed by the intergovernmental utility authority on behalf of the local government receiving financing for an eligible project.
- The intergovernmental utility authority and the local government enter into a servicing agreement under which the local government collects the charge.
- The moneys from the charge are transferred to the intergovernmental utility authority and used to secure bonds issued for the benefit of the local government.
- The moneys collected from the charge are held in trust for the benefit of the bondholders. These moneys are not considered revenues of the local government but are treated as revenues of the intergovernmental utility authority.
- The intergovernmental utility authority is not permitted to file bankruptcy while any of the bonds are outstanding.

The Florida Governmental Utility Authority is the only intergovernmental authority that currently meets the criteria to provide financing under the bill. FGUA's current purpose is to own and operate a public utility system for the provision of water and wastewater service.

The bill does not impact state government revenues or expenditures. The bill may reduce local government expenditures by reducing financing costs for water or wastewater utility projects for utilities owned and operated by a local agency, including any municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Financing Authority of Local Government Entities for Public Works Projects

Local governments are authorized under current law to issue bonds, revenue certificates, and other forms of indebtedness related to the provision of public works projects.

Upon a resolution, a county may issue water revenue bonds, sewer revenue bonds, or general obligation bonds to pay all or part of the cost to purchase, construct, improve, extend, enlarge, or reconstruct water supply systems or sewage disposal systems.[1] Water revenue bonds are payable solely from water service charges.[2] Sewer revenue bonds are payable solely from sewer service charges.[3] Neither type of revenue bond pledges the property, credit, or general tax revenue of the county. General obligation bonds are payable from ad valorem taxes alone or from ad valorem taxes with an additional secured pledge of water service charges, sewer service charges, special assessments, or a combination of these sources.[4] Issuance of general obligation bonds, as required by the State Constitution,[5] requires approval by referendum, and a county is required to levy annually a special tax upon all taxable property within the county to pay the principle and interest as it becomes due.[6] Counties may also create special water and sewer districts to serve unincorporated areas, and the district's board may issue revenue bonds to finance all or part of the cost of a water system, sewer system, or both. Such bonds are payable from the revenues derived from operation of the utility system as provided by law and the authorizing resolution of the district's board.[7]

Upon approval of a municipality's governing body, a municipality may issue revenue bonds, general obligation bonds, ad valorem bonds, or improvement bonds to finance capital expenditures made for a public purpose. Revenue bonds are payable from sources other than ad valorem taxes and are not secured by a pledge of the property, credit, or general tax revenue of the municipality. General obligation bonds are payable from any special taxes levied for the purpose of repayment and any other sources as provided by the authorizing ordinance or resolution. Such bonds are secured by the full faith and credit and taxing power of the municipality and may require approval by referendum. Ad valorem bonds are payable from the proceeds of ad valorem taxes and, as required by the State Constitution[8], require approval by referendum. Improvement bonds are special obligations payable solely from the proceeds of special assessments levied for a project.[9]

Further, a municipality may issue mortgage revenue certificates or debentures to acquire, construct, or extend public works, including, among other things, water and alternative water supply facilities, sewage collection and disposal facilities, gas plants and distribution systems, and stormwater projects.[10] These instruments constitute a lien only against the property and revenue of the utility.

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[1] s. 153.03(1) and (2), F.S.
[2] s. 153.02(9), F.S.
[3] s. 153.02(10), F.S.
[4] s. 153.02(11), F.S.
[5] FLA. CONST. art. VII, s. 12 (providing that counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation only "to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation.")
[6] s. 153.07, F.S.
[7] s. 153.63(1), F.S. Such bonds may also be secured by the pledge of special assessments or the full faith and credit of the district.
[8] See Footnote 5.
[9] s. 166.101, F.S., et seq.
[10] ss. 180.06 and 180.08, F.S.

These instruments may not impose any tax liability upon any real or personal property in the municipality and may not constitute a debt against the issuing municipality.[11]

The Division of Bond Finance (DBF) of the State Board of Administration provides information to, and collects information from, units of local government[12] concerning the issuance of bonds by such entities.[13] Each unit of local government must provide DBF a complete description of its new general obligation bonds and revenue bonds and must provide advanced notice of the impending sale of a new issue of bonds.[14] According to DBF, a public utility generally finances projects with revenue bonds, securing the debt with a pledge of net revenues of the utility system. These net revenues consist of the income of the public utility remaining after paying expenses necessary to operate and maintain the utility. DBF notes that this current practice requires the efficient operation of the utility system to assure that sufficient net revenues are available to pay debt service.

Creation and Financing Authority of Intergovernmental Utility Authorities

The Florida Interlocal Cooperation Act of 1969 (Act) is intended to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.[15] The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.[16] Under such an agreement, the local governmental units may create a separate legal or administrative entity "to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities."[17] A separate entity created by an interlocal agreement possesses the authority specified in the agreement.[18] Among the authority granted such an entity is the power to authorize, issue, and sell bonds.[19]

The Act specifically addresses the establishment of such entities to provide water service or sewer service (hereinafter referred to as "intergovernmental utility authorities" or "IGUAs"). Section 163.01(7)(g), F.S., authorizes the creation of IGUAs to acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including water and alternative water supply facilities, wastewater facilities, and water reuse facilities.[20] An IGUA created under this provision may also finance such facilities on behalf of any person. The membership of an IGUA created under this provision is limited to two or more special districts, municipalities, or counties of the state. The IGUA's facilities may serve populations "within or outside of the members of the entity" but not within the service area of an existing utility system. IGUAs are not subject to regulation by the Public Service Commission.

An IGUA created under s. 163.07(g), F.S., may finance or refinance the acquisition, construction, expansion, and improvement of facilities through the issuance of bonds, notes, or other obligations. Except as may be limited by the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of the statutes relating to counties[21] and municipalities[22] are fully

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[11] s. 180.08, F.S.
[12] "Unit of local government" is defined in s. 218.369, F.S., as "a county, municipality, special district, district school board, local agency, authority, or consolidated city-county government or any other local governmental body or public body corporate and politic authorized or created by general or special law and granted the power to issue general obligation or revenue bonds."
[13] s. 218.37, F.S.
[14] *Id.* DBF is authorized only to collect information concerning these bonds; it does not exercise any substantive authority to review or approve these transactions.
[15] s. 163.01(2), F.S.
[16] s. 163.01(5), F.S.
[17] s. 163.01(2), F.S.
[18] s. 163.01(7)(b), F.S.
[19] s. 163.01(7)(d), F.S.
[20] s. 163.01(7)(g), F.S.
[21] s. 125.01, F.S.

applicable to the IGUA. Bonds, notes, and other obligations issued by the IGUA are issued on behalf of the public agencies that are members of the IGUA.[23]

The Florida Governmental Utility Authority (FGUA) was formed in 1999 pursuant to s. 163.01(7)(g), F.S. As noted on its website, FGUA is a separate legal entity created by interlocal agreement with the limited purpose of owning and operating a public utility system. It provides retail water and wastewater utility services in several portions of the state. The FGUA consists of 14 counties: Alachua, Citrus, Collier, Hardee, Hillsborough, Lake, Lee, Marion, Orange, Pasco, Polk, Putnam, Seminole, and Volusia counties have systems in the FGUA.[24] FGUA's governing board is comprised of seven members representing Citrus, DeSoto, Hendry, Lee, Marion, Pasco, and Polk counties.[25] Each board member is a county employee appointed by their local government.[26]

Utility Securitization Financing in Florida

Following the severe tropical storm seasons that Florida faced in 2004 and 2005, the Legislature created a new financing mechanism, referred to as securitization, by which investor-owned electric utilities could petition the Public Service Commission for issuance of a financing order authorizing the utility to issue bonds through a separate legal entity.[27] If granted, the financing order was required to establish a nonbypassable charge to the utility's customers in order to provide a secure stream of revenues to the separate legal entity from which the bonds would be paid. The purpose of this mechanism was to allow utilities access to low-cost financing to cover storm recovery costs and to replenish storm reserve funds. This mechanism has been implemented in only one instance.[28]

Effect of Proposed Changes

The bill establishes a new mechanism – "Utility Cost Containment Bonds" – available to an intergovernmental authority to finance, on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity (including the IGUA itself), projects related to water or wastewater service. The creation of this financing mechanism, referred to as securitization, is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible projects.

In summary, the financing mechanism created by the bill operates as follows:

- A "local agency" applies to the intergovernmental utility authority to finance the costs of an eligible project using "utility cost containment bonds."
- The intergovernmental utility authority adopts a "financing resolution" setting forth certain requirements for issuance of the bonds. (To finance the project, the intergovernmental utility authority may form a single-purpose limited liability company or, together with two or more of its members or other public agencies, may create a new single-purpose entity to perform the duties and responsibilities of the authority under the bill.)
- The bonds are secured by the revenues from a separate "utility project charge" stated on the bill of each present and future customer of the services specified in the financing resolution.
- This charge is imposed by the intergovernmental utility authority on behalf of the local government receiving financing for an eligible project.
- The intergovernmental utility authority and the local government enter into a servicing agreement under which the local government collects the charge.

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[22] s. 166.021, F.S.
[23] s. 163.01(7)(g)7., F.S.
[24] http://www.fgua.com/fgua-history (last accessed March 9, 2015).
[25] http://www.fgua.com/the-board (last accessed March 9, 2015).
[26] *Id.*
[27] s. 366.8260, F.S.
[28] Docket No. 060038-EI, Florida Public Service Commission.

- The moneys from the charge are transferred to the intergovernmental utility authority and used to secure bonds issued for the benefit of the local government.
- The moneys collected from the charge are held in trust for the benefit of the bondholders. These moneys are not considered revenues of the local government but are treated as revenues of the intergovernmental utility authority.
- The intergovernmental utility authority is not permitted to file bankruptcy while any of the bonds are outstanding.

The Florida Governmental Utility Authority is the only intergovernmental authority that currently meets the criteria to provide financing under the bill. Thus, the bill expands FGUA's original purpose of owning and operating a public utility system.

Definitions

The bill provides the following definitions:

- **"Authority"** means an entity, including a successor to the powers and functions of such entity, created pursuant to s. 163.01(7)(g), F.S., that provides public utility services and whose membership consists of at least three counties.[29]

- **"Cost,"** as applied to a utility project or portion of a utility project financed under this section, means any of the following:
  - Any part of the expense of constructing, renovating, or acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a utility project.
  - The expense of demolishing or removing any buildings or structures on acquired land, including the expense of acquiring any lands to which the buildings or structures may be moved, and the cost of all machinery and equipment used for the demolition or removal.
  - Finance charges.
  - Interest, as determined by the authority.
  - Provisions for working capital and debt service reserves.
  - Expenses for extensions, enlargements, additions, replacements, renovations, and improvements.
  - Expenses for architectural, engineering, financial, accounting, and legal services, and for plans, specifications, estimates, and administration.
  - Any other expenses necessary or incidental to determining the feasibility of constructing a utility project or incidental to the construction, acquisition, or financing of a utility project.

- **"Customer"** means a person receiving water or wastewater service from a publicly owned utility.

- **"Financing cost"** means any of the following:
  - Interest and redemption premiums that are payable on utility cost containment bonds.
  - The cost of retiring the principal of utility cost containment bonds, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption.
  - The cost related to issuing or servicing utility cost containment bonds, including payment under an interest rate swap agreement, and any types of fee.
  - A payment or expense associated with a bond insurance policy; financial guaranty; contract, agreement, or other credit or liquidity enhancement for bonds; or contract, agreement, or other financial agreement entered into in connection with utility cost containment bonds.
  - Any coverage charges.
  - The funding of one or more reserve accounts related to utility cost containment bonds.

[29] Only the Florida Governmental Utility Authority currently meets this definition.

- **"Finance" or "financing"** includes refinancing.

- **"Financing resolution"** means a resolution adopted by the governing body of an authority that finances or refinances a utility project with utility cost containment bonds and that imposes a utility project charge in connection with the utility cost containment bonds. A financing resolution may be separate from a resolution authorizing the issuance of the bonds.

- **"Governing body"** means the body that governs a local agency.

- **"Local agency"** means a member of the authority, or an agency or subdivision of that member, that is sponsoring or refinancing a utility project, or any municipality, county, authority, special district, public corporation, regional water authority, or other governmental entity of the state that is sponsoring or refinancing a utility project.[30]

- **"Public utility services"** means water or wastewater services provided by a publicly owned utility. The term does not include communications services, as defined in s. 202.11, F.S., Internet access services, or information services.

- **"Publicly owned utility"** means a utility furnishing retail or wholesale water or wastewater services that is owned and operated by a local agency. The term includes any successor to the powers and functions of such a utility.

- **"Revenue"** means income and receipts of the authority related to the financing of utility projects and issuance of utility cost containment bonds, including any of the following:
  - Bond purchase agreements.
  - Bonds acquired by the authority.
  - Installment sale agreements and other revenue-producing agreements entered into by the authority.
  - Utility projects financed or refinanced by the authority.
  - Grants and other sources of income.
  - Moneys paid by a local agency.
  - Interlocal agreements with a local agency, including all service agreements.
  - Interest or other income from any investment of money in any fund or account established for the payment of principal, interest, or premiums on utility cost containment bonds, or the deposit of proceeds of utility cost containment bonds.

- **"Utility cost containment bonds"** means bonds, notes, commercial paper, variable rate securities, and any other evidences of indebtedness issued by an authority, the proceeds of which are used directly or indirectly to pay or reimburse a local agency or its publicly owned utility for the costs of a utility project and which are secured by a pledge of, and are payable from, utility project property.

- **"Utility project"** means the acquisition, construction, installation, retrofitting, rebuilding, or other addition to or improvement of any equipment, device, structure, process, facility, technology, rights, or property located in or out of the state that is used in connection with the operations of a publicly owned utility.

[30] Because FGUA provides "public utility services" (water and wastewater services) that may be supported by a financeable "utility project," it appears to qualify as an authority or other governmental entity of the state and would meet the definition of a "local agency." Thus, FGUA could be both an "authority" and a "local agency" under the bill. See *Drafting Issue or Other Comments* section of this analysis for further discussion.

- **"Utility project charge"** means a charge levied on customers of a publicly owned utility to pay the financing costs of utility cost containment bonds issued pursuant to the bill. The term includes any authorized adjustment to the utility project charge.

- **"Utility project property"** means the property right created pursuant to the bill, including the right, title, and interest of an authority in any of the following:
    - The financing resolution, the utility project charge, and any adjustment to the utility project charge.
    - The financing costs of the utility cost containment bonds and all revenues, and all collections, claims, payments, moneys, or proceeds for, or arising from, the utility project charge.
    - All rights to obtain adjustments to the utility project charge pursuant to the bill.[31]

  The term does not include any interest in a customer's real or personal property.

Local Agency Authority

The bill provides that a local agency that owns and operates a publicly owned utility may apply to the intergovernmental utility authority to finance the costs of a utility project using the proceeds of utility cost containment bonds. In its application, the local agency must specify the utility project to be financed, the maximum principal amount, the maximum interest rate, and the maximum stated terms of the utility cost containment bonds.

Before applying, the governing body of the local agency must determine the following:

- The project to be financed is a utility project.[32]
- The local agency will finance costs of the utility project and the associated financing costs will be paid from utility project property (i.e., the charge to utility customers).
- Based on the best information available, the rates charged to the local agency's retail customers by the publicly owned utility, including the utility project charge resulting from the financing of the utility project with utility cost containment bonds, are expected to be lower than the rates that would be charged if the project was financed with bonds payable from revenues of the publicly owned utility.

If a local agency that has outstanding utility cost containment bonds ceases to operate a water or wastewater, directly or through its publicly owned utility, any successor entity must assume and perform all obligations of the local agency and its publicly owned utility and assume the servicing agreement with the authority while the utility cost containment bonds remain outstanding.

Powers of the Intergovernmental Utility Authority

In addition to its existing powers under s. 163.01(7)(g), F.S., the bill provides that an intergovernmental utility authority may issue utility cost containment bonds to finance or refinance utility projects; to refinance debt of a local agency previously issued to finance or refinance such projects, if the refinancing results in present value savings; or, upon approval of a local agency, to refinance previously issued utility cost containment bonds.

To finance a utility project, the authority may form a single-purpose limited liability company and authorize the company to adopt the financing resolution. Alternatively the authority and two or more of its members or other public agencies may create a new single-purpose entity by interlocal agreement. Either type of entity may be created by the authority solely for the purposes of performing the duties and responsibilities of the authority and is treated as an authority for purposes of the bill.

[31] The bill specifies that this term does not include any interest in a customer's real or personal property.
[32] This determination is deemed "final and conclusive" by the bill.

The governing body of an authority that is financing the costs of an eligible utility project must adopt a financing resolution and impose a utility project charge. All provisions of the financing resolution are binding on the authority. The financing resolution must include the following:

- A description of the financial calculation method the authority will use to determine the utility project charge. The calculation method must include a periodic adjustment methodology to be applied at least annually to the utility project charge. The adjustment methodology may not be changed. The authority must establish the allocation of the utility project charge among classes of customers of the publicly owned utility. The decisions of the authority are final and conclusive.
- A requirement that each customer in the class or classes of customers specified in the financing resolution who receives water or wastewater service through the publicly owned utility must pay the utility project charge, regardless of whether the customer has an agreement to receive water or wastewater service from a person other than the publicly owned utility.
- A requirement that the utility project charge be charged separately from other charges on the bill of each customer of the utility that is in the class or classes of customers specified in the financing resolution.
- A requirement that the authority enter into a servicing agreement with the local agency or its publicly owned utility to collect the utility project charge.

The authority may require in the financing resolution that, in the event of default by the local agency or its publicly owned utility, the authority must order the sequestration and payment to the beneficiaries of the revenues arising from the utility project property (discussed in detail, below) if the beneficiaries apply for payment of the revenues under a lien.

With respect to regional water projects, the authority must work with local agencies that request assistance to determine the most cost-effective manner of financing. If these entities determine that issuance of utility cost containment bonds will result in lower financing costs for a project, the authority must issue the bonds at the request of the local agencies.

Utility Project Charges

The bill requires the authority to impose a utility project charge sufficient to ensure timely payment of all financing costs with respect to utility cost containment bonds. The charge must be based on estimates of water or wastewater service usage. The authority may require information from the local agency or its publicly owned utility to establish the charge.

The utility project charge is a nonbypassable charge on all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution at the time of its adoption. If a customer who is subject to the charge enters into an agreement to purchase water or wastewater service from a supplier other than the publicly owned utility, the customer remains liable for payment of the charge if the customer received any service or benefit from the utility after the date the charge was imposed.

At least annually, and at any other interval specified in the financing resolution and related documents, the authority must determine whether adjustments to the utility project charge are required and, if so, make the necessary adjustments to correct for any over collection or under collection of financing costs from the charge or to otherwise ensure timely payment of the financing costs of the bonds, including payment of any required debt service coverage. The authority may require information from the local agency or its publicly owned utility to adjust the charge. If an adjustment is deemed necessary, it must be made using the methodology specified in the financing resolution. An adjustment may not impose the charge upon a class of customers not previously subject to the charge under the financing resolution.

Revenues from a utility project charge are deemed special revenues of the authority and do not constitute revenue of the local agency or its publicly owned utility for any purpose. The local agency or its publicly owned utility must act as a servicing agent for collecting the charge pursuant to a servicing agreement to be required by the financing resolution. The money collected must be held in trust for the exclusive benefit of the persons entitled to have the financing costs paid from the utility project charge.

The timely and complete payment of all utility project charges by the customer is a condition of receiving water or wastewater service from the publicly owned utility. The bill authorizes the local agency or its publicly owned utility to use its established collection policies and remedies under law to enforce collection of the charge. A customer liable for a utility project charge is not permitted to withhold payment of any portion of the charge.

The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state or any other entity is not permitted to reduce, impair, or otherwise adjust the utility project charge, except for the periodic adjustments that the authority is required to make pursuant to the financing resolution.

Utility Project Property

The bill provides that the utility project charge constitutes utility project property when a financing resolution authorizing the charge becomes effective. As defined by the bill, utility project property constitutes property, including contracts that secure utility cost containment bonds, whether or not the revenues and proceeds arising with respect to the utility project property have accrued. The utility project property continuously exists as property for all purposes for the period provided in the financing resolution or until all financing costs with respect to the related utility cost containment bonds are paid in full, whichever occurs first.

Upon the effective date of the financing resolution, the utility project property is subject to a first priority statutory lien to secure the payment of the utility cost containment bonds. The lien secures the payment of all financing costs that exist at that time or that subsequently arise to the holders of the bonds, the trustee or representative for the holders of the bonds, and any other entity specified in the financing resolution or the documents relating to the bonds. The lien attaches to the utility project property regardless of the current ownership of the utility project property, including any local agency or its publicly owned utility, the authority, or other person. Upon the effective date of the financing resolution, the lien is valid and enforceable against the owner of the utility project property and all third parties, and additional public notice is not required. The lien is a continuously perfected lien on all revenues and proceeds generated from the utility project property, regardless of whether the revenues or proceeds have accrued.

All revenues with respect to utility project property related to utility cost containment bonds, including payments of the utility project charge, must first be applied to the payment of the financing costs of the bonds then due, including the funding of reserves for the bonds. Any excess revenues will be applied as determined by the authority for the benefit of the utility for which the bonds were issued.

Utility Cost Containment Bonds

The bill provides that the proceeds of utility cost containment bonds made available to the local agency or its publicly owned utility must be used for the utility project identified in the application for financing of the project or used to refinance indebtedness of the local agency that financed or refinanced the project.

The bonds must be issued pursuant to the provisions of the bill and the procedures specified for intergovernmental utility authorities under s. 163.01(7)(g)8., F.S., and may be validated pursuant to existing procedures for such entities under s. 163.01(7)(g)9., F.S.

The authority must pledge all utility project property as security for payment of the bonds. All rights of the authority with respect to the pledged property are for the benefit of and enforceable by the beneficiaries of the pledge as provided in the related financing documents. If utility project property is pledged as security for the payment of utility cost containment bonds, the local agency or its publicly owned utility must enter into a contract with the authority which requires that the local agency or its utility:

- Continue to operate the utility, including the utility project that is being financed or refinanced.
- Collect the utility project charge from customers for the benefit and account of the authority and the beneficiaries of the pledge of the charge.
- Separately account for and remit revenue from the utility project charge to, or for the account of, the authority.

The utility cost containment bonds are nonrecourse to the credit or any assets of the local agency or the publicly owned utility but are payable from, and secured by a pledge of, the utility project property relating to the bonds and any additional security or credit enhancement specified in the documents relating to the bonds. If the authority is financing the project through a single-purpose limited liability company, the bonds are payable from, and secured by, a pledge of amounts paid by the company to the authority from the applicable utility project property. This represents the exclusive method of perfecting a pledge of utility project property by the company.

The issuance of utility cost containment bonds does not obligate the state or any political subdivision of the state to levy or to pledge any form of taxation to pay the bonds or to make any appropriation for their payment. The bill provides that each bond must contain on its face the following statement or a similar statement: "Neither the full faith and credit nor the taxing power of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of, or interest on, this bond."

The authority may not rescind, alter, or amend any resolution or document that pledges utility cost charges for payment of utility cost containment bonds.

Subject to the terms of the pledge document, the validity and relative priority of a pledge is not defeated or adversely affected by the commingling of revenues generated by the utility project property with other funds of the local agency or the publicly owned utility collecting a utility project charge on behalf of an authority.

The bill provides that financing costs in connection with utility cost containment bonds are a special obligation of the authority and do not constitute a liability of the state or any political subdivision of the state. Financing costs are not a pledge of the full faith and credit of the state or any political subdivision, including the authority, but are payable solely from the funds identified in the documents relating to the bonds. This does not preclude guarantees or credit enhancements in connection with the bonds.

Except as provided in the bill with respect to adjustments to a utility project charge, recovery of the financing costs for utility cost containment bonds from the utility project charge is irrevocable. Further, the authority is prohibited from: rescinding, altering, or amending the applicable financing resolution to revalue or revise the financing costs of the bonds for ratemaking purposes; determining that the financing costs for the related bonds or the utility project charge is unjust or unreasonable; or in any way reducing or impairing the value of utility project property that includes the charge. The amount of revenues arising with respect to the financing costs for the related bonds or the charge are not subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the charge are fully met and discharged.

Further, except as provided in the bill with respect to adjustments to a utility project charge, the bill establishes a pledge that the state may not limit or alter the financing costs or the utility project property, including the utility project charge associated with the bonds, or any rights related to the utility

project property until all financing costs with respect to the bonds are fully discharged. This provision does not preclude limitation or alteration if adequate provision is made by law to protect the owners of the bonds. The state's pledge may be included by the authority in the governing documents for the bonds.

Bankruptcy Prohibition

The bill provides that, notwithstanding any other law, an authority that has issued utility cost containment bonds may not become a debtor under the United States Bankruptcy Code or become the subject of any similar case or proceeding under any other state or federal law if any payment obligation from utility project property remains with respect to the bonds. Further, no governmental officer or organization may authorize the authority to become such a debtor or become subject to such a case or proceeding in this circumstance.

Construction

The bill provides for its liberal construction to effectively carry out its intent and purposes. Further, the bill expressly grants and confers upon public entities all incidental powers necessary to carry the bill into effect.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law to be cited as the Utility Cost Containment Bond Act.

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:

   Indeterminate. The bill may reduce local government expenditures by reducing financing costs for water or wastewater utility projects for utilities owned and operated by a local agency, including any municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Customers may benefit from lower financing costs for local agency utility projects, if the resulting savings are passed through to customers. The bill does not require that savings be passed through to customers.

D. FISCAL COMMENTS:

The creation of the utility cost containment bond financing mechanism is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate on bonds issued to fund eligible local agency utility projects. The lower rate could result in lower financing costs for these projects.

Because the intergovernmental utility authority (or a single purpose limited liability company created by the authority or a new single-purpose entity formed by interlocal agreement) is the obligor on the bonds, the debt from an issuance of utility cost containment bonds will not be reflected on the local agency or utility's balance sheet. Also, revenues from the utility project charge and expenses for debt service on the bonds will not be reflected on the local agency or utility's financial statements.

A local agency that uses this financing mechanism may have less incentive to carefully control operating expenses of its public utility, because bondholders are paid from the separate fee regardless of the utility's financial condition. Also, the mechanism may encourage the issuance of additional debt because the debt is paid from the revenues of the authority regardless of any change in the utility's operating expenses.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The 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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Financing of Projects of the Intergovernmental Utility Authority

The bill requires interaction between the local agency and the intergovernmental utility authority in certain instances, including the requirement that a local agency apply to the authority for financing and the requirement that the authority enter into a servicing agreement with the local agency. However, as defined in the bill, it appears that an intergovernmental utility authority could seek financing itself as a "local agency," creating a situation in which the authority must seek approval from itself and enter into an agreement with itself. The bill authorizes the authority to form a single-purpose limited liability company or, together with two or more of its members, to create a new single-purpose entity by local agreement to perform the intergovernmental utility authority duties. If the authority creates one of these

entities, it may avoid a situation in which it must apply to itself for financing or enter into a servicing agreement with itself. However, the authority may have a role in the governance of either entity.

Establishment of Utility Project Charges

The bill provides that the governing body of an authority that is financing the costs of a utility project must adopt a financing resolution and impose a utility project charge, and the decisions of the authority are final and conclusive. A local agency that uses this financing mechanism is not required to be or to become a member of the authority. Though the authority may require and utilize information from the local agency or its publicly owned utility in setting utility project charges and rate classes, a local agency that does not become a member of the authority does not appear to have a formal role in the adoption of a financing resolution setting the charge and rate classes. In turn, the customers of those local agencies' public utilities may lack representation in this rate-setting process.

Application of Utility Project Charges

The bill provides that if a customer who is subject to a utility project charge enters into an agreement to purchase water or wastewater service from a provider other than the utility, that customer remains liable for the charge if the customer has received any service or benefit from the utility after the date the charge was imposed. This language could be interpreted to attach the charge to a customer even if that customer leaves the system (i.e., a "customer who has received any service or benefit"), and it is not clear when that liability ends.[33] This provision may need clarification.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 31, 2015, the Finance & Tax Committee adopted an amendment to CS/HB617. The amendment excluded from "public utility services" stormwater service, communications services, as defined in s. 202.11, F.S., internet access service, and information services, and clarified that utility project property does not include any interest in a customer's real or personal property.

The analysis has been updated to reflect the adoption of this amendment.

[33] The charges established in this provision can be distinguished from charges established in similar provisions found in s. 366.8260, F.S., related to storm-cost recovery financing for investor-owned electric utilities. Section 366.8260, F.S., addresses a scenario in which retail competition for electricity may be introduced in the state and customers would have the choice to select an alternative electricity supplier. In this scenario, the customer would continue to receive transmission and/or distribution service from the investor-owned electric utility and, therefore, would remain a true customer of the utility for purposes of liability for the charge.

A bill to be entitled

An act relating to utility projects; providing a short title; providing definitions; authorizing certain local government entities to finance the costs of a utility project by issuing utility cost containment bonds upon application by a local agency; specifying application requirements; requiring a successor entity of a local agency to assume and perform the obligations of the local agency with respect to the financing of a utility project; providing procedures for local agencies to use when applying to finance a utility project using utility cost containment bonds; authorizing an authority to issue utility cost containment bonds for specified purposes related to utility projects; authorizing an authority to form alternate entities to finance utility projects; requiring the governing body of the authority to adopt a financing resolution and impose a utility project charge on customers of a publicly owned utility as a condition of utility project financing; specifying required and optional provisions of the financing resolution; specifying powers of the authority; requiring the local agency or its publicly owned utility to assist the authority in the establishment or adjustment of the utility project charge; requiring that customers of the public utility specified in the

financing resolution pay the utility project charge; providing for adjustment of the utility project charge; establishing ownership of the revenues of the utility project charge; requiring the local agency or its publicly owned utility to collect the utility project charge; conditioning a customer's receipt of public utility services on payment of the utility project charge; authorizing a local agency or its publicly owned utility to use available remedies to enforce collection of the utility project charge; providing that the pledge of the utility project charge to secure payment of bonds issued to finance the utility project is irrevocable and cannot be reduced or impaired except under certain conditions; providing that a utility project charge constitutes utility project property; providing that utility project property is subject to a lien to secure payment of costs relating to utility cost containment bonds; establishing payment priorities for the use of revenues of the utility project property; providing for the issuance and validation of utility cost containment bonds; securing the payment of utility cost containment bonds and related costs; providing that utility cost containment bonds do not obligate the state or any political subdivision and are not backed by their full faith and credit and taxing

power; requiring that certain disclosures be printed on utility cost containment bonds; providing that financing costs related to utility cost containment bonds are an obligation of the authority only; providing limitations on the state's ability to alter financing costs or utility project property under certain circumstances; prohibiting an authority with outstanding payment obligations on utility cost containment bonds from becoming a debtor under certain federal or state laws; providing for construction; endowing public entities with certain powers; providing an effective date.

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

Section 1. Utility Cost Containment Bond Act.—

(1) SHORT TITLE.—This section may be cited as the "Utility Cost Containment Bond Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Authority" means an entity created under s. 163.01(7)(g), Florida Statutes, that provides public utility services and whose membership consists of at least three counties. The term includes any successor to the powers and functions of such an entity.

(b) "Cost," as applied to a utility project or a portion of a utility project financed under this section, means:

1. Any part of the expense of constructing, renovating, or acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a utility project;

2. The expense of demolishing or removing any buildings or structures on acquired land, including the expense of acquiring any lands to which the buildings or structures may be moved, and the cost of all machinery and equipment used for the demolition or removal;

3. Finance charges;

4. Interest, as determined by the authority;

5. Provisions for working capital and debt service reserves;

6. Expenses for extensions, enlargements, additions, replacements, renovations, and improvements;

7. Expenses for architectural, engineering, financial, accounting, and legal services, plans, specifications, estimates, and administration; or

8. Any other expenses necessary or incidental to determining the feasibility of constructing a utility project or incidental to the construction, acquisition, or financing of a utility project.

(c) "Customer" means a person receiving water or wastewater service from a publicly owned utility.

(d) "Finance" or "financing" includes refinancing.

(e) "Financing cost" means:

1. Interest and redemption premiums that are payable on utility cost containment bonds;

2. The cost of retiring the principal of utility cost containment bonds, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption;

3. The cost related to issuing or servicing utility cost containment bonds, including any payment under an interest rate swap agreement and any type of fee;

4. A payment or expense associated with a bond insurance policy; financial guaranty; contract, agreement, or other credit or liquidity enhancement for bonds; or contract, agreement, or other financial agreement entered into in connection with utility cost containment bonds;

5. Any coverage charges; or

6. The funding of one or more reserve accounts relating to utility cost containment bonds.

(f) "Financing resolution" means a resolution adopted by the governing body of an authority that provides for the financing or refinancing of a utility project with utility cost containment bonds and that imposes a utility project charge in connection with the utility cost containment bonds in accordance with subsection (4). A financing resolution may be separate from a resolution authorizing the issuance of the bonds.

(g) "Governing body" means the body that governs a local agency.

(h) "Local agency" means a member of the authority, or an agency or subdivision of that member, that is sponsoring or refinancing a utility project, or any municipality, county, authority, special district, public corporation, regional water authority, or other governmental entity of the state that is sponsoring or refinancing a utility project.

(i) "Public utility services" means water or wastewater services provided by a publicly owned utility. The term does not include communications services, as defined in s. 202.11, Florida Statutes, Internet access services, or information services.

(j) "Publicly owned utility" means a utility providing retail or wholesale water or wastewater services that is owned and operated by a local agency. The term includes any successor to the powers and functions of such a utility.

(k) "Revenue" means income and receipts of the authority related to the financing of utility projects and issuance of utility cost containment bonds, including any of the following:

1. Bond purchase agreements;

2. Bonds acquired by the authority;

3. Installment sales agreements and other revenue-producing agreements entered into by the authority;

4. Utility projects financed or refinanced by the authority;

5. Grants and other sources of income;

6. Moneys paid by a local agency;

7. Interlocal agreements with a local agency, including all service agreements; or

8. Interest or other income from any investment of money in any fund or account established for the payment of principal, interest, or premiums on utility cost containment bonds, or the deposit of proceeds of utility cost containment bonds.

(l) "Utility cost containment bonds" means bonds, notes, commercial paper, variable rate securities, and any other evidence of indebtedness issued by an authority the proceeds of which are used directly or indirectly to pay or reimburse a local agency or its publicly owned utility for the costs of a utility project and which are secured by a pledge of, and are payable from, utility project property.

(m) "Utility project" means the acquisition, construction, installation, retrofitting, rebuilding, or other addition to or improvement of any equipment, device, structure, process, facility, technology, rights, or property located within or outside this state which is used in connection with the operations of a publicly owned utility.

(n) "Utility project charge" means a charge levied on customers of a publicly owned utility to pay the financing costs of utility cost containment bonds issued under subsection (4). The term includes any adjustments to the utility project charge under subsection (5).

(o) "Utility project property" means the property right created pursuant to subsection (6). The term does not include

any interest in a customer's real or personal property but includes the right, title, and interest of an authority in any of the following:

1. The financing resolution, the utility project charge, and any adjustment to the utility project charge established in accordance with subsection (5);

2. The financing costs of the utility cost containment bonds and all revenues, and all collections, claims, payments, moneys, or proceeds for, or arising from, the utility project charge; or

3. All rights to obtain adjustments to the utility project charge pursuant to subsection (5).

(3) UTILITY PROJECTS.—

(a) A local agency that owns and operates a publicly owned utility may apply to an authority to finance the costs of a utility project using the proceeds of utility cost containment bonds. In its application to the authority, the local agency shall specify the utility project to be financed by the utility cost containment bonds and the maximum principal amount, the maximum interest rate, and the maximum stated terms of the utility cost containment bonds.

(b) A local agency may not apply to an authority for the financing of a utility project under this section unless the governing body has determined, in a duly noticed public meeting, all of the following:

1. The project to be financed is a utility project.

2. The local agency will finance costs of the utility project, and the costs associated with the financing will be paid from utility project property, including the utility project charge for the utility cost containment bonds.

3. Based on the best information available to the governing body, the rates charged to the local agency's retail customers by the publicly owned utility, including the utility project charge resulting from the financing of the utility project with utility cost containment bonds, are expected to be lower than the rates that would be charged if the project were financed with bonds payable from revenues of the publicly owned utility.

(c) A determination by the governing body that a project to be financed with utility cost containment bonds is a utility project is final and conclusive, and the utility cost containment bonds issued to finance the utility project and the utility project charge shall be valid and enforceable as set forth in the financing resolution and the documents relating to the utility cost containment bonds.

(d) If a local agency that has outstanding utility cost containment bonds ceases to operate a water or wastewater utility, directly or through its publicly owned utility, references in this section to the local agency or to its publicly owned utility shall be to the successor entity. The successor entity shall assume and perform all obligations of the local agency and its publicly owned utility required by this

section and shall assume the servicing agreement required under subsection (4) while the utility cost containment bonds remain outstanding.

(4) FINANCING UTILITY PROJECTS.—

(a) An authority may issue utility cost containment bonds to finance or refinance utility projects; refinance debt of a local agency incurred in financing or refinancing utility projects, provided such refinancing results in present value savings to the local agency; or, with the approval of the local agency, refinance previously issued utility cost containment bonds.

1. To finance a utility project, the authority may:

a. Form a single-purpose limited liability company and authorize the company to adopt the financing resolution of such utility project; or

b. Create a new single-purpose entity by interlocal agreement under s. 163.01, Florida Statutes, the membership of which shall consist of the authority and two or more of its members or other public agencies.

2. A single-purpose limited liability company or a single-purpose entity may be created by the authority solely for the purpose of performing the duties and responsibilities of the authority specified in this section and shall constitute an authority for all purposes of this section. Reference to the authority includes a company or entity created under this paragraph.

(b) The governing body of an authority that is financing the costs of a utility project shall adopt a financing resolution and shall impose a utility project charge as described in subsection (5). All provisions of a financing resolution adopted pursuant to this section are binding on the authority.

1. The financing resolution must:

a. Provide a brief description of the financial calculation method the authority will use in determining the utility project charge. The calculation method shall include a periodic adjustment methodology to be applied at least annually to the utility project charge. The authority shall establish the allocation of the utility project charge among classes of customers of the publicly owned utility. The decision of the authority shall be final and conclusive, and the method of calculating the utility project charge and the periodic adjustment may not be changed;

b. Require each customer in the class or classes of customers specified in the financing resolution who receives water or wastewater service through the publicly owned utility to pay the utility project charge regardless of whether the customer has an agreement to receive water or wastewater service from a person other than the publicly owned utility;

c. Require that the utility project charge be charged separately from other charges on the bill of customers of the publicly owned utility in the class or classes of customers

specified in the financing resolution; and

d. Require that the authority enter into a servicing agreement with the local agency or its publicly owned utility to collect the utility project charge.

2. The authority may require in the financing resolution that, in the event of a default by the local agency or its publicly owned utility with respect to revenues from the utility project property, the authority, upon application by the beneficiaries of the statutory lien as set forth in subsection (6), shall order the sequestration and payment to the beneficiaries of revenues arising from utility project property. This subparagraph does not limit any other remedies available to the beneficiaries by reason of default.

(c) An authority has all the powers provided in this section and s. 163.01(7)(g), Florida Statutes.

(d) Each authority shall work with local agencies that request assistance to determine the most cost-effective manner of financing regional water projects. If the entities determine that the issuance of utility cost containment bonds will result in lower financing costs for a project, the authority shall cooperate with such local agencies and, if requested by the local agencies, issue utility cost containment bonds as provided in this section.

(5) UTILITY PROJECT CHARGE.—

(a) The authority shall impose a sufficient utility project charge, based on estimates of water or wastewater

service usage, to ensure timely payment of all financing costs with respect to utility cost containment bonds. The local agency or its publicly owned utility shall provide the authority with information concerning the publicly owned utility which may be required by the authority in establishing the utility project charge.

(b) The utility project charge is a nonbypassable charge to all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution upon its adoption. If a customer of a publicly owned utility that is subject to a utility project charge enters into an agreement to purchase water or wastewater service from a supplier other than the publicly owned utility, the customer remains liable for the payment of the utility project charge if the customer has received any service or benefit from the publicly owned utility after the date the utility project charge was imposed.

(c) The authority shall determine at least annually and at such additional intervals as provided in the financing resolution and documents related to the applicable utility cost containment bonds whether adjustments to the utility project charge are required. The authority shall use the adjustment to correct for any overcollection or undercollection of financing costs from the utility project charge or to make any other adjustment necessary to ensure the timely payment of the financing costs of the utility cost containment bonds, including

adjustment of the utility project charge to pay any debt service coverage requirement for the utility cost containment bonds. The local agency or its publicly owned utility shall provide the authority with information concerning the publicly owned utility which may be required by the authority in adjusting the utility project charge.

1. If the authority determines that an adjustment to the utility project charge is required, the adjustment shall be made using the methodology specified in the financing resolution.

2. The adjustment may not impose the utility project charge on a class of customers that was not subject to the utility project charge pursuant to the financing resolution imposing the utility project charge.

(d) Revenues from a utility project charge are special revenues of the authority and do not constitute revenue of the local agency or its publicly owned utility for any purpose, including any dedication, commitment, or pledge of revenue, receipts, or other income that the local agency or its publicly owned utility has made or will make for the security of any of its obligations.

(e) The local agency or its publicly owned utility shall act as a servicing agent for collecting the utility project charge throughout the duration of the servicing agreement required by the financing resolution. The local agency or its publicly owned utility shall hold the money collected in trust for the exclusive benefit of the persons entitled to have the

financing costs paid from the utility project charge, and the money does not lose its designation as revenues of the authority by virtue of possession by the local agency or its publicly owned utility.

(f) The customer must make timely and complete payment of all utility project charges as a condition of receiving water or wastewater service from the publicly owned utility. The local agency or its publicly owned utility may use its established collection policies and remedies provided under law to enforce collection of the utility project charge. A customer liable for a utility project charge may not withhold payment, in whole or in part, thereof.

(g) The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state, or any other entity, may not reduce, impair, or otherwise adjust the utility project charge, except that the authority shall implement the periodic adjustments to the utility project charge as provided under this subsection.

(6) UTILITY PROJECT PROPERTY.—

(a) A utility project charge constitutes utility project property on the effective date of the financing resolution authorizing such utility project charge. Utility project property constitutes property, including for contracts securing utility cost containment bonds, regardless of whether the revenues and proceeds arising with respect to the utility project property have accrued. Utility project property shall

continuously exist as property for all purposes with all of the rights and privileges of this section through the end of the period provided in the financing resolution or until all financing costs with respect to the related utility cost containment bonds are paid in full, whichever occurs first.

(b) Upon the effective date of the financing resolution, the utility project property is subject to a first-priority statutory lien to secure the payment of the utility cost containment bonds.

1. The lien secures the payment of all financing costs then existing or subsequently arising to the holders of the utility cost containment bonds, the trustees or representatives of the holders of the utility cost containment bonds, and any other entity specified in the financing resolution or the documents relating to the utility cost containment bonds.

2. The lien attaches to the utility project property regardless of the current ownership of the utility project property, including any local agency or its publicly owned utility, the authority, or any other person.

3. Upon the effective date of the financing resolution, the lien is valid and enforceable against the owner of the utility project property and all third parties, and additional public notice is not required.

4. The lien is a continuously perfected lien on all revenues and proceeds generated from the utility project property regardless of whether the revenues or proceeds have

accrued.

(c) All revenues with respect to utility project property related to utility cost containment bonds, including payments of the utility project charge, shall be applied first to the payment of the financing costs of the utility cost containment bonds then due, including the funding of reserves for the utility cost containment bonds. Any excess revenues shall be applied as determined by the authority for the benefit of the utility for which the utility cost containment bonds were issued.

(7) UTILITY COST CONTAINMENT BONDS.—

(a) Utility cost containment bonds shall be issued within the parameters of the financing provided by the authority pursuant to this section. The proceeds of the utility cost containment bonds made available to the local agency or its publicly owned utility shall be used for the utility project identified in the application for financing of the utility project or used to refinance indebtedness of the local agency which financed or refinanced utility projects.

(b) Utility cost containment bonds shall be issued as set forth in this section and s. 163.01(7)(g)8., Florida Statutes, and may be validated pursuant to s. 163.01(7)(g)9., Florida Statutes.

(c) The authority shall pledge the utility project property as security for the payment of the utility cost containment bonds. All rights of an authority with respect to

utility project property pledged as security for the payment of utility cost containment bonds shall be for the benefit of, and enforceable by, the beneficiaries of the pledge to the extent provided in the financing documents relating to the utility cost containment bonds.

1. If utility project property is pledged as security for the payment of utility cost containment bonds, the local agency or its publicly owned utility shall enter into a contract with the authority which requires, at a minimum, that the publicly owned utility:

a. Continue to operate its publicly owned utility, including the utility project that is being financed or refinanced;

b. Collect the utility project charge from customers for the benefit and account of the authority and the beneficiaries of the pledge of the utility project charge; and

c. Separately account for and remit revenue from the utility project charge to, or for the account of, the authority.

2. The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state or any other entity may not reduce, impair, or otherwise adjust the utility project charge, except that the authority shall implement periodic adjustments to the utility project charge as provided under subsection (5).

(d) Utility cost containment bonds shall be nonrecourse to the credit or any assets of the local agency or the publicly

owned utility but shall be payable from, and secured by a pledge of the utility project property relating to the utility cost containment bonds and any additional security or credit enhancement specified in the documents relating to the utility cost containment bonds. If, pursuant to subsection (4), the authority is financing the project through a single-purpose limited liability company, the utility cost containment bonds shall be payable from, and secured by, a pledge of amounts paid by the company to the authority from the applicable utility project property. This paragraph shall be the exclusive method of perfecting a pledge of utility project property by the company securing the payment of financing costs under any agreement of the company in connection with the issuance of utility cost containment bonds.

(e) The issuance of utility cost containment bonds does not obligate the state or any political subdivision thereof to levy or to pledge any form of taxation to pay the utility cost containment bonds or to make any appropriation for their payment. Each utility cost containment bond must contain on its face a statement in substantially the following form:

"Neither the full faith and credit nor the taxing power of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of, or interest on, this bond."

(f) Notwithstanding any other law or this section, a

CODING: Words stricken are deletions; words underlined are additions.

financing resolution or other resolution of the authority, or documents relating to utility cost containment bonds, the authority may not rescind, alter, or amend any resolution or document that pledges utility cost charges for payment of utility cost containment bonds.

(g) Subject to the terms of any pledge document created under this section, the validity and relative priority of a pledge is not defeated or adversely affected by the commingling of revenues generated by the utility project property with other funds of the local agency or the publicly owned utility collecting a utility project charge on behalf of an authority.

(h) Financing costs in connection with utility cost containment bonds are a special obligation of the authority and do not constitute a liability of the state or any political subdivision thereof. Financing costs are not a pledge of the full faith and credit of the state or any political subdivision thereof, including the authority, but are payable solely from the funds identified in the documents relating to the utility cost containment bonds. This paragraph does not preclude guarantees or credit enhancements in connection with utility cost containment bonds.

(i) Except as otherwise provided in this section with respect to adjustments to a utility project charge, the recovery of the financing costs for the utility cost containment bonds from the utility project charge shall be irrevocable, and the authority does not have the power, by rescinding, altering, or

amending the applicable financing resolution, to revalue or revise for ratemaking purposes the financing costs of utility cost containment bonds; to determine that the financing costs for the related utility cost containment bonds or the utility project charge is unjust or unreasonable; or to in any way reduce or impair the value of utility project property that includes the utility project charge, either directly or indirectly. The amount of revenues arising with respect to the financing costs for the related utility cost containment bonds or the utility project charge are not subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the utility project charge are fully met and discharged.

(j) Except as provided in subsection (5) with respect to adjustments to a utility project charge, the state pledges and agrees with the owners of utility cost containment bonds that the state may not limit or alter the financing costs or the utility project property, including the utility project charge, relating to the utility cost containment bonds, or any rights related to the utility project property, until all financing costs with respect to the utility cost containment bonds are fully met and discharged. This paragraph does not preclude limitation or alteration if adequate provision is made by law to protect the owners. The authority may include the state's pledge in the governing documents for utility cost containment bonds.

(8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other

law, an authority that issued utility cost containment bonds may not, and a governmental officer or organization may not authorize the authority to, become a debtor under the United States Bankruptcy Code or become the subject of any similar case or proceeding under any other state or federal law if any payment obligation from utility project property remains with respect to the utility cost containment bonds.

(9) CONSTRUCTION.—This section and all grants of power and authority in this section shall be liberally construed to effectuate their purposes. All incidental powers necessary to carry this section into effect are expressly granted to, and conferred upon, public entities.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 887 Unclaimed Property
SPONSOR(S): Trumbull
TIED BILLS: **IDEN./SIM. BILLS:** SB 1138

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

SUMMARY ANALYSIS

Unclaimed property consists of any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain period of time. Savings and checking accounts, stocks, bonds, insurance policy payments, refunds, and contents of safe deposit boxes are potentially unclaimed property. Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS) Bureau of Unclaimed Property, pursuant to the Florida Disposition of Unclaimed Property Act (ch. 717, F.S.).

U.S. savings bonds are debt securities issued by the U.S. Department of the Treasury (Treasury) to help pay for the federal government's borrowing needs. Most of the bonds at issue (Series E) were issued between 1941 and 1980. As contracts between the U.S. government and the bond's owner, they are backed by the full faith and credit of the U.S. government. Given the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, the Treasury currently holds nearly 50 million unredeemed Series E savings bonds and will do so in perpetuity. Federal law does not require an unclaimed property process to reunite the bond owner with the bond, as state unclaimed property law does. Treasury policy dictates that the Treasury will not release bonds to a state with a custody-based unclaimed property law, but will do so if the state can take title to the bonds. The state of Florida currently holds custody of unclaimed, physical bonds *(bonds in possession)* with a face value of more than $1.2 million. However, federal law prohibits the transfer of U.S. savings bonds to anyone other than the named beneficiary except in limited circumstances, including pursuant to a valid judicial proceeding. Currently, the custody-based nature of the Act precludes recovery of these physical bonds. In addition, the DFS estimates there is an even greater number of *absent bonds* issued to individuals whose last known address is in Florida, but have been lost, stolen, or destroyed.

The bill creates a judicial process whereby the DFS may seek a court order to obtain title to the bonds in possession, similar to a Kansas statute that led to a recent favorable recovery of proceeds from physical U.S. savings bonds issued to Kansas residents. The bill establishes a post-maturity period of time which will indicate that the bonds are lost, stolen, or destroyed, allowing the DFS to initiate escheat proceeds. If or when the proceeds are received, the bill requires the proceeds to be deposited in accordance with s. 717.123, F.S., as with any other unclaimed property. The bill creates a claims process that requires the DFS to comport with due process prior to any escheat hearing, in that it must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication. Even after the bonds escheat to the state, the original bond owner may still recover the bond proceeds under the claims process set forth in the bill, and may make a claim to the DFS for the proceeds of the bond. Once the DFS obtains title to these bonds, it may petition the Treasury for redemption of these bonds in possession, and if necessary, to render a full accounting of the necessary information of absent bonds, which would identify the class of bonds registered with the last known address in Florida.

There is a potential positive, yet indeterminate fiscal impact to state revenues and an indeterminate fiscal impact to state expenditures. The fiscal impact depends on whether the state prevails in obtaining title to the physical bonds, whether it prevails in a petition to the Treasury for information and ultimate release of absent bond proceeds, and the extent to which originally registered bond owners may make a claim.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Unclaimed Property

Unclaimed property constitutes any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.[1]

Florida Disposition of Unclaimed Property Act

In 1987, Florida adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., "the Act").[2] The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the Department of Financial Services (DFS) Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or distributable, unless otherwise provided in the Act.[3] Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate apparent owners within 180 days after an account becomes inactive.[4] Once this search period expires, holders must file an annual report with the DFS for all property, valued at $50 or more, that is presumed unclaimed for the preceding year.[5] The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.[6]

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.[7] The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.[8] The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department is to deliver or pay over to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.[9]

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[1] ss. 717.104 – 717.116, F.S.
[2] Ch. 87-105, Laws of Fla. *See also* UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act
[3] s. 717.102(1), F.S.
[4] s. 717.117(4), F.S.
[5] s. 717.117, F.S.
[6] s. 717.119, F.S.
[7] s. 717.1201, F.S.
[8] ss.717.117 and 717.124, F.S.
[9] s. 717.124, F.S.

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.[10] The DFS is allowed to retain up to $15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Trust Fund to be utilized for public education.[11]

Like many other states' unclaimed property act, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.[12]

U.S. Savings Bonds[13]

Pursuant to its constitutional power "to borrow money on the credit of the United States,"[14] Congress delegated authority to the United States Department of the Treasury ("Treasury"), with approval of the President, to issue savings bonds "for expenditures authorized by law."[15] U.S. savings bonds are debt securities issued by the Treasury to help pay for the federal government's borrowing needs and are backed by the full faith and credit of the U.S. government. A U.S. savings bond is a contract between the federal government and the bond's owner that is controlled by federal law. However, in disputes which do not concern the rights and duties of the United States, questions of title are to be decided by state law.[16]

The federal government began selling savings bonds in 1941 for World War II defense spending, and subsequently to encourage thrift and savings by small investors. The majority of the bonds at issue are Series E bonds (known informally as Defense Bonds), which were issued between 1941 and 1980 and had maturity terms of 30-40 years. In 2011, the last Series E bonds matured and stopped earning interest.[17]

Due to the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, a significant number of bonds remain unclaimed. As of January 31, 2015, the Treasury holds nearly $49.3 million matured, unredeemed savings bonds, with a maturity value of $16.5 billion.[18] The federal regulations do not impose any time limits for bond owners to redeem Series E savings bonds.

There are two types of unclaimed savings bonds:

- *Bonds in possession* are U.S. savings bonds physically held by an unclaimed property administrator's office, typically discovered from expired safe deposit boxes. These bonds are delivered to the DFS pursuant to the Act. However, as described in further detail below, the

[10] s. 717.123, F.S.
[11] *Id.*
[12] Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.
[13] Except where specifically identified, this portion of the analysis is derived from the facts and background in *Treasurer of New Jersey v U.S. Dep't of Treasury*, 684 F.3d 382 (3rd Cir. 2012).
[14] U.S. CONST. art. I, § 8, cl. 2
[15] 31 U.S.C. § 3105(a). The federal legislation authorizing Treasury to sell U.S. savings bonds was signed into law in 1935. *See* TREASURY DIRECT, *The History of U.S. Savings Bonds*, http://www.treasurydirect.gov/timeline.htm
[16] 91 C.J.S. United States § 249 (Government bonds, generally).
[17] TREASURYDIRECT, *The Volunteer Program and Series E Savings Bonds*, http://www.treasurydirect.gov/indiv/research/history/history_ebond.htm. The federal government sold the Series E bonds at a discount and paid interest on them only at maturity. While Series E bonds have stopped earning interest, owners of E bonds may still redeem them. Series E bonds were replaced by the Series EE bond in 1980.
[18] TREASURYDIRECT, *Matured, Unredeemed Debt and Unclaimed Moneys Reports: Statistical report of matured, unredeemed savings bonds and notes* (Jan. 21, 2015), http://www.treasurydirect.gov/foia/foia_mud.htm

DFS currently cannot redeem bonds in possession without first taking title to these bonds via escheatment.

- *Absent bonds* are the class of U.S. savings bonds issued to an individual whose last known address is in Florida, but have been lost, stolen, or destroyed. As such, these bonds are not physically in the possession of the DFS. The records regarding absent bonds (such as registration information, serial numbers, and addresses) are exclusively held by the Treasury. The Treasury's online unredeemed bonds database, Treasury Hunt, does not contain a record of all savings bonds. The system only provides information on Series E bonds issued in 1974 or after, and is organized by social security number. Additionally, pursuant to the Privacy Act of 1974, Treasury Hunt only provides limited information to anyone who is not the bond owner or co-owner.[19]

In Florida, the DFS presently is in possession of unclaimed *physical* U.S. savings bonds with a face value of more than $1.2 million. According to the DFS, the total amount of unclaimed, matured *absent* U.S. savings bonds registered to persons with a last known address in Florida is estimated to be well over $100 million.[20]

Unlike many other types of securities, "savings bonds are not transferable and are payable only to the owners named on the bonds," except as specifically provided for in the federal regulations.[21] There are limited exceptions to this general rule against transferability of savings bonds, including cases in which a third party attains an interest in a bond through valid judicial proceedings.[22] A registered owner of a bond is presumed conclusively to be its owner, absent errors in registration.[23]

While federal law pervades the terms and conditions of the U.S. savings bond program (including the authority to fix the bonds' investment yield, transfer, redemption, and sales prices),[24] there is no federal escheat or unclaimed property law requiring the federal government to search for and reunite bond owners with the bonds. Instead, the federal government will hold these bonds in perpetuity. State unclaimed property laws, on the other hand, govern the significant public policy concerns of the abandonment of intangible personal property.[25]

For several decades, various states have sought to recover the proceeds from matured but unredeemed savings bonds. In 1952, Treasury issued a bulletin (referred to as the "Escheat Decision") explaining that it would pay the proceeds of savings bonds to the state of New York if it actually obtained *title* to the bonds, but would not do so if the state merely obtained a right to the *custody* of the proceeds.[26] In 2000, the Treasury published online guidance consistent with the 1952 Escheat Decision.[27] Both articulations of the Treasury policy raised serious concerns with releasing U.S. bonds to states with custody-based statutes, because such a state that steps into the shoes of the *payor* (Treasury) merely as a custodian would not discharge the Treasury of its contractual obligation and liability to bond holders.[28] On the other hand, the Treasury guidance appears to accept a state stepping into the shoes of the *payee* (the bond owner) through a valid judicial determination made under a title-based law.

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[19] TREASURYDIRECT, *Treasury Hunt*, at http://www.treasurydirect.gov/indiv/tools/tools_treasuryhunt.htm
[20] Department of Financial Services, Agency Analysis of House Bill 887, p. 1 (Mar. 17, 2015).
[21] 31 C.F.R. §§ 315.15, 353.15.
[22] 31 C.F.R. §§ 315.20(b), 353.20(b).
[23] 31 C.F.R. §§315.15, 353.15.
[24] 31 U.S.C. § 3105.
[25] Other scenarios involving the application of state unclaimed property laws to unclaimed intangible property in the federal government's possession include unclaimed accounts from liquidated nationally-chartered financial institutions or property subject to administration by the U.S. bankruptcy courts.
[26] *New Jersey v. Treasury*, at 390-391.
[27] TREASURYDIRECT, *EE/E Savings Bonds FAQs*, http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res_e_bonds_eefaq.htm
[28] In *New Jersey v. Treasury*, several states with custody-based statutes offered to indemnify Treasury in exchange for the bond proceeds; however, Treasury declined.

Kansas Title-Based Statute and Recovery of Proceeds from Bonds in Possession

In 2000, the state of Kansas enacted a change in state law to designate its state treasurer's office as the official *title owner* of unclaimed U.S. savings bonds,[29] in order to align with long-standing Treasury policy. Based on this state law, Kansas obtained a favorable declaratory judgment in state trial court awarding title to 1,447 fully matured and unclaimed U.S. savings bonds in possession found in unclaimed safe deposit boxes. In January 2014, the Kansas state treasurer announced the receipt of $861,908 from the Treasury for those physical bonds (bonds in possession).[30]

In contrast to the outcome in Kansas, a federal appeals court in 2012 denied an attempt by several state unclaimed property administrators to recover proceeds of unredeemed physical U.S. savings bonds from the Treasury, based on several constitutional grounds.[31] However, a significant aspect of the court's holding turned on the fact that these states' unclaimed property acts were "custody" statutes, not "title" statutes, thus conflicting with the Treasury's policy.[32]

To date, seven states have enacted similar title-based unclaimed property laws based on the Kansas statute, in an effort to seek the proceeds of bonds in possession. Title-based unclaimed property legislation is currently pending in at least nine other states.

Unclaimed Absent Bonds

Following its receipt of proceeds from the Treasury for unclaimed physical bonds, Kansas next petitioned the Treasury to redeem the remaining class of matured *absent* savings bonds issued to owners with a last known address in Kansas. While the Treasury made limited information available to Kansas about matured savings bonds issued after 1974 on its Treasury Hunt website, the Treasury did not provide other information necessary to search the database (such as the original owners' social security numbers) or any information about older bonds.

In December 2014, the Kansas state treasurer initiated suit against the Treasury in the U.S. Court of Federal Claims,[33] seeking payment for $151 million in unclaimed absent bonds and for records identifying the original owners.[34] This lawsuit is still pending. The parties recently completed supplemental briefing on the Treasury's motion to dismiss, but a final ruling has not yet been issued.[35]

Effect of the Bill

The bill, similar to the Kansas law, creates a judicial process in the Act, whereby the DFS may file a civil action in a court of competent jurisdiction in Leon County, Florida to determine that title to unclaimed U.S. savings bonds escheat to the state. If the DFS obtains title to these bonds, it places the DFS in the same position as the record owner of the bond, which is necessary to recover proceeds from Treasury.

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[29] Kan. Stat. Ann. §§ 58-3979 and 3980 (2014).

[30] KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php

[31] The constitutional issues in *New Jersey v. Treasury* involved preemption, intergovernmental immunity, and waiver of sovereign immunity under the federal Administrative Procedures Act.

[32] *New Jersey v. Treasury*, at 389. The plaintiff states were New Jersey, North Carolina, Montana, Kentucky, Oklahoma, Missouri, and Pennsylvania.

[33] *Ron Estes, Treasurer of the State of Kansas v. United States*, U.S. Ct. of Fed. Claims (Case No. 1:13-cv-01011-EDK). The U.S. Court of Federal Claims is an Article I, congressionally created court that has exclusive jurisdiction over claims for monetary damages against the federal government and that arise from federal constitutional, statutory, and regulatory laws, as well as contracts with the U.S. government. *See* 28 U.S.C. § 1491.

[34] KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php

[35] Supplemental briefs in *Estes v. United States*, on file with the Insurance & Banking Subcommittee staff.

Under the bill, U.S. savings bonds are not considered unclaimed until they have matured and have remained unclaimed for five years after the bond maturity date (typically 30-40 years). This five year post-maturity period will indicate that the bonds are lost, stolen, or destroyed, allowing the DFS to initiate escheat proceedings.

If or when the proceeds are received, the bill requires the proceeds to be deposited in accordance with s. 717.123, F.S. (as with any other unclaimed property), which requires deposit of proceeds into the Unclaimed Property Trust Fund within the DFS, allows the DFS to retain $15 million to pay proceeds and administrative expenses, and requires deposit of any remaining funds into the State School Trust Fund to be utilized for public education.

The bill creates a claims process to return the money to valid claimants and requires the DFS to comport with due process prior to any escheat hearing, in that it must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication,[36] as it must do when parties cannot be found through reasonable and customary due diligence efforts. Even after the bonds escheat to the state, an original bond owner may still recover the proceeds of the bond under the claims process set forth in the bill, and may make a claim to the DFS for the proceeds of the bond. This "second chance" provision allows originally named bond owners who did not or could not comply with the Treasury's regulations for redemption.

Once the DFS obtains title to these bonds, it may petition the Treasury for redemption of these bonds in possession, and if necessary, to render a full accounting of the necessary information of absent bonds, which would identify the class of bonds registered with the last known address in Florida.[37]

The bill applies to any U.S. savings bonds that reach maturity on, before, or after the bill's effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1. Creates s. 717.1382, F.S., relating to United States savings bond; unclaimed property; escheatment; procedure.

Section 2. Creates s. 717.1383, F.S., relating to U.S. savings bond; claim for bond.

Section 3. Provides a statement of applicability.

Section 4. 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:

[36] Service of process by publication is set forth in ch. 49, F.S. (Constructive Service of Process).

[37] If necessary, the state may join the lawsuit against Treasury. Because the value of absent bonds is significantly higher than the bonds in possession, it is likely that the state will have to file suit to recover the proceeds from the absent bonds.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

There is a potential positive, yet indeterminate fiscal impact to state revenues and an indeterminate fiscal impact to state expenditures. The fiscal impact depends on whether the state prevails in obtaining title to the physical bonds, whether it prevails in a petition to the Treasury for information and ultimate release of absent bond proceeds, and the extent to which originally registered bond owners may make a claim. The DFS anticipates legal costs associated with potential litigation as a result of the bill. The actual costs are unknown at this time; however, the department indicates that any legal costs can be absorbed with existing resources. The DFS indicates that any revenue or expenditure impact to the department as a result of this legislation is unknown at this time.[38]

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 provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[38] Department of Financial Services, Agency Analysis of House Bill 887, p. 2 (Mar. 17, 2015).

A bill to be entitled

An act relating to unclaimed property; creating s. 717.1382, F.S.; providing for escheatment to the state of unclaimed United States savings bonds; providing for judicial determination of escheatment; providing procedures for challenging escheatment; providing for deposit of the proceeds of escheatment; creating s. 717.1383, F.S.; providing that a person claiming a United States savings bond may file a claim with the Department of Financial Services; providing limitations on such claim; providing applicability; providing an effective date.

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

Section 1. Section 717.1382, Florida Statutes, is created to read:

717.1382 United States savings bond; unclaimed property; escheatment; procedure.—

(1) Notwithstanding any other provision of law, a United States savings bond in possession of the department or registered to a person with a last known address in the state, including a bond that is lost, stolen, or destroyed, is presumed abandoned and unclaimed 5 years after the bond reaches maturity and no longer earns interest and shall be reported and remitted to the department by the financial institution or other holder

CODING: Words stricken are deletions; words underlined are additions.

in accordance with ss. 717.117(1) and (3) and 717.119, if the department is not in possession of the bond.

(2)(a) After a United States savings bond is abandoned and unclaimed in accordance with subsection (1), the department may commence a civil action in a court of competent jurisdiction in Leon County for a determination that the bond shall escheat to the state. Upon determination of escheatment, all property rights to the bond or proceeds from the bond, including all rights, powers, and privileges of survivorship of an owner, coowner, or beneficiary, shall vest solely in the state.

(b) Service of process by publication may be made on a party in a civil action pursuant to this section. A notice of action shall state the name of any known owner of the bond, the nature of the action or proceeding in short and simple terms, the name of the court in which the action or proceeding is instituted, and an abbreviated title of the case.

(c) The notice of action shall require a person claiming an interest in the bond to file a written defense with the clerk of the court and serve a copy of the defense by the date fixed in the notice. The date must not be less than 28 or more than 60 days after the first publication of the notice.

(d) The notice of action shall be published once a week for 4 consecutive weeks in a newspaper of general circulation published in Leon County. Proof of publication shall be placed in the court file.

(e)1. If no person files a claim with the court for the

bond and if the department has substantially complied with the provisions of this section, the court shall enter a default judgment that the bond, or proceeds from such bond, has escheated to the state.

2. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is not entitled to the bonds claimed by such claimant, the court shall enter a judgment that such bonds, or proceeds from such bonds, have escheated to the state.

3. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is entitled to the bonds claimed by such claimant, the court shall enter a judgment in favor of the claimant.

(3) The department may redeem a United States savings bond escheated to the state pursuant to this section or, in the event that the department is not in possession of the bond, seek to obtain the proceeds from such bond. Proceeds received by the department shall be deposited in accordance with s. 717.123.

Section 2. Section 717.1383, Florida Statutes, is created to read:

717.1383 United States savings bond; claim for bond.—A person claiming a United States savings bond escheated to the state under s. 717.1382, or for the proceeds from such bond, may file a claim with the department. The department may approve the claim if the person is able to provide sufficient proof of the validity of the person's claim. Once a bond, or the proceeds

from such bond, are remitted to a claimant, no action thereafter may be maintained by any other person against the department, the state, or any officer thereof, for or on account of such funds. The person's sole remedy, if any, shall be against the claimant who received the bond or the proceeds from such bond.

Section 3. This act applies to any United States savings bond that reaches maturity on, before, or after the effective date of this act.

Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 995 Consumer Licensing
SPONSOR(S): Appropriations Committee and Business & Professions Subcommittee, Trumbull and Workman
TIED BILLS: CS/HB 997 **IDEN./SIM. BILLS:** CS/SB 1444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Butler	Luczynski
2) Appropriations Committee	24 Y, 0 N, As CS	Lolley	Leznoff
3) Regulatory Affairs Committee		Butler BSB	Hamon K.W.H.

SUMMARY ANALYSIS

The bill contains modifications to several licensing and consumer services activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (Department).

Within the Division of Consumer Services, the bill:

- Provides that the Department shall waive the initial license fee for veterans and their spouses for license applications submitted within 60 months of the veteran's discharge from a branch of the United States Armed Forces for certain professions and business entities majority owned by veterans or their spouses;
- Removes language within Florida's Telemarketing Act related to a "mail drop," and clarifies that telemarketing applicants must have an actual physical location for telemarketing operations within Florida;
- Transfers the enforcement of the "Commercial Weight-Loss Practices Act," which provides consumer information, to the Department of Health whom currently substantively regulate dietetics, nutritional practices and other weight-loss related professions;
- Provides an exemption from the inspection requirements for water-related amusement rides at facilities not open to the general public, if:
    - The ride is an incidental amenity operated by a licensed lodging or food service establishment;
    - The ride is an incidental amenity at a private, membership-only facility; or,
    - The ride is located at a nonprofit charitable permanent facility.
- Provides that owner or manager of an amusement ride may use an inspection form approved by the Department instead of the Department's generalized inspection form.

Within the Division of Licensing, the bill:

- Requires the Department to participate in FDLE's Applicant Fingerprint Retention and Notification Program and requires security, private investigation and recovery industry licensees to submit fingerprints and pay retention fees for the state and federal fingerprint retention programs;
- Removes the residency requirement for security industry licensure;
- Provides that the qualifying training required for concealed weapon license holders in Florida must include a live fire demonstration by the trainee in the physical presence of the trainer;
- Replaces notice by personal service, service by certified mail, and service by publication requirements with a requirement to send notice by either e-mail or regular mail, without return receipt, for the suspension or revocation of concealed weapons licenses;
- Removes the notarization requirement for concealed weapon license renewals and requires applications be submitted under oath and under penalty of perjury;
- Provides that approved tax collectors may print and furnish a renewal license to a concealed weapon license holder who submits a renewal application at the tax collector's office;
- Reduces the fees for concealed weapon licenses to $60 for the initial license and $50 for the renewal;
- Creates a Florida veteran identification card.

The bill will have a significant fiscal impact on state government and the private sector. See Fiscal Analysis & Economic Impact Statement for more information. The bill appropriates 1 position and $254,300 from the Division of Licensing Trust Fund to DACS to implement s. 570.695, F.S.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

The bill includes modifications to several regulatory and consumer activities under the Department's jurisdiction, specifically the Division of Consumer Services and Division of Licensing. Each proposed change is divided by subject and each subject is followed by a listing of the applicable sections of the bill.

B. SECTION DIRECTORY:

The following includes the Current Situation and Effect of the Bill.

Division of Consumer Services

Military Veteran Fees

There are more than 231,000 veterans of the Afghanistan and Iraq wars that currently live in Florida.[1] One of the greatest challenges facing returning veterans is finding gainful employment in a profession.

In recent years, the Department of Business and Professional Regulation and the Department of Health have begun waiving professional license fees for veterans. Specifically, Chapter 2014-1, Laws of Florida, amended s. 455.213, F.S., to allow the Department of Business and Professional Regulation to waive the initial licensing fee, initial application fee, and initial unlicensed activity fee for a military veteran or his or her spouse within 60 months of discharge. This same bill amended s. 456.013, F.S., and s. 468.304, F.S., to waive similar fees for the Department of Health.

The Department regulates several industries under its Division of Consumer Services, including surveyors and mappers, health studios, telemarketing, intrastate movers, sellers of liquefied petroleum gasoline, pawn broking, motor vehicle repair, and sellers of travel. The Department has received inquiries from individuals who have heard of the waivers offered by the Department of Business and Professional Regulation and the Department of Health asking if similar waivers are available for industries under the Division of Consumer Services.

The bill provides that the Department shall waive the initial license fees for veterans and their spouses for license applications submitted within 60 months of the veteran's discharge from any branch of the United States Armed Services for the following industries and professions: surveyors and mappers (s. 472.015, F.S.), health studios (s. 501.015, F.S.), telemarketing (ss. 501.605 & 501.607, F.S.), intrastate

[1] Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 995, p. 3 (Mar. 3, 2015).

movers (s. 507.03, F.S.), sellers of liquefied petroleum gasoline (s. 527.02, F.S.), pawn broking (s. 539.001, F.S.), motor vehicle repair (s. 559.904, F.S.), and sellers of travel (s. 559.928, F.S.).

Furthermore, initial license fees will be waived for business entities where a veteran or their spouse is the majority owner in the above industries.

Section 1 amends s. 472.015, F.S. (surveyors and mappers), **Section 8** amends s. 501.015, F.S. (health studios), **Section 11** amends s. 501.605, F.S. (telemarketing), **Section 12** amends s. 501.607, F.S. (telemarketing), **Section 13** amends s. 507.03, F.S. (intrastate movers), **Section 14** amends s. 527.02, F.S. (liquefied petroleum gasoline), **Section 15** amends s. 539.001, F.S. (pawnbrokers), **Section 16** amends s. 559.904, F.S. (motor vehicle repair), and **Section 17** amends s. 559.928, F.S. (sellers of travel).

Telemarketing

The Department has regulatory authority over telemarketing businesses and regularly conducts onsite investigations looking for unlicensed or unlawful activity. Telemarketing is regulated under Florida's Telemarketing Act, codified in ss. 501.601 – 501.626, F.S.

Applicants must have an actual physical location for telemarketing operation under s. 501.605, F.S., to become "commercial telephone sellers." A mail drop cannot be the actual physical location of the business.

The bill revises s. 501.605, F.S., to remove an inconsistency in current law asking whether a location is a "mail drop," and should have no effect on the industry.

Section 11 amends s. 501.605, F.S.

Commercial Weight-Loss Practices Act

Currently, the Department is charged with enforcing the "Commercial Weight-Loss Practices Act." This Act requires weight-loss providers to provide consumers with a Weight Loss Consumer Bill of Rights, disclose information about the provider and program, and provide itemized statements.

The Department believes that it has no substantive nexus with this industry, which primarily includes medical staff and weight loss centers that are staffed by dietitians and nutritionists.[2] Dietetics, nutrition practices, and other weight-loss professions are regulated by Department of Health (DOH), which has experience and expertise related to the weight loss industry.

The Department has previously attempted to repeal this section, but amended the repeal out of their Department bill in 2014 after discussing concerns with opponents.[3] The Florida Dietetic Association has an interest in the enforcement of this Act and the Department reports working with the Association to increase consumer awareness about the Act by including information in the consumer calendar and e-newsletters.[4] However, given the limited expertise, the Department does not believe they are able to enforce this program to the level that the Association desires.

This bill transfers enforcement of the Act to DOH. The Department believes that this transfer will result in a more efficient use of state resources as DOH has primary jurisdiction over dietitians and nutritionists.

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[2] Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 995, p. 5 (Mar. 3, 2015).
[3] *See generally*, PCB BPRS 14-01(2014) and HB 7051 (2014)(a version of these bills passed without the "Commercial Weight-Loss Practices Act" repeal language and was enrolled as Chapter 2014-147, Laws of Fla.).
[4] Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 995, p. 5 (Mar. 3, 2015).

Section 9 amends s. 501.0581, F.S. (civil remedies), and **Section 10** amends s. 501.0583, F.S. (penalties and enforcement)

Safety Standards for Amusement Rides

The Bureau of Fair Rides Inspection (Bureau) of the Department protects citizens and visitors of Florida through their amusement ride inspection program. The Bureau is assigned to carry out the inspection and investigation mandates of s. 616.242, F.S., and enforcement of adopted rules, regulations and codes for amusement rides. The Bureau has statewide responsibility to inspect all amusement rides in the state, except for certain large parks which have more than 1,000 employees and have full time inspectors on staff.

The Department has previously removed inspection requirements for private facilities such as residential community centers not open to the general public, and this bill seeks to clarify and expand that exemption to include lodging or food service establishments under Chapter 509, F.S.

The Department believes that the inspection of water-related amusement rides that are incidental amenities of a licensed lodging or food service establishment and regulated by the Department of Business and Professional Regulation is unnecessary. The Department currently does not monitor waterslides at hotels that are not open to the public and do not allow day rates.

This bill also exempts a facility operating as a charitable entity licensed under Chapter 496, F.S., which is not open to the general public. Although the Department licenses these companies, the Department states that only two companies would be covered by this exemption, and these companies are not open to the general public.

Finally, the bill exempts a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public, is not primarily engaged in providing amusement, pleasure, thrills, or excitement, and does not offer day rates.

This bill also allows the use of manufacturer inspection forms to be submitted to the Department in lieu of the Department's form if the manufacturer's form is approved by the Department. Currently, fair ride owners have to fill out a Department form for inspections and for training of employees. These forms are not customized to any specific ride. As a result, fair ride owners frequently fill out the Department form in addition to a form provided by the manufacturer that is specific to the ride being inspected.[5]

The Department believes that use of manufacturer's inspection forms will lead to more detailed and thorough inspections, which will enhance public safety. Fair ride owners must submit their new forms for approval. Once approved, documentation will be kept on file to ensure that management is only using pre-approved forms that have, at a minimum, the same information that is required on the Department's forms. Those who prefer to may continue to use the Department's generic inspection and training forms.

Section 20 amends s. 616.242, F.S.

Division of Licensing

The Division of Licensing within the Department is responsible for protecting the public from unethical business practices on the part of persons providing private security, private investigative and recovery services to the public through licensure and regulation of those industries pursuant to Chapter 493, F.S. Additionally, the Division is responsible for the issuance of Concealed Weapon or Firearm Licenses in accordance with s. 790.06, F.S.

[5] Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 995, p. 5 (Mar. 3, 2015).

Licensee Fingerprint Retention

An individual who wishes to work in the private investigation, recovery, or security industries that are regulated by the Department under Chapter 493, F.S., must provide a set of fingerprints and submit to a criminal history background check. After a person has been licensed, the Department is mandated by s. 493.6118, F.S., to continually monitor weekly criminal arrests and match reports furnished by the Florida Department of Law Enforcement (FDLE) to ensure that licensees remain eligible for licensure during the term of the license. The current process is very time consuming, based only on name-search criteria, and does not guarantee accurate identification.

When a match is found, the Division of Licensing must manually review the demographic information of the arrested person with the demographic information of the matched licensee. Further, the Department is only able to receive match reports from FDLE of arrests that occur in Florida.

The bill requires the Department to participate in FDLE's Applicant Fingerprint Retention and Notification Program (AFRNP) and allows for retention of applicant fingerprints within FDLE's Biometric Identification System (BIS).

A component of the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) project includes retaining fingerprints at the national level. In order for entities to participate in the federal program, fingerprints must be retained at the state level and subsequently enrolled through the state program into the FBI's program.

Participation at the statewide level would require payment of an annual fee of $6.00 for each year that a license is valid. Participation in the fingerprint retention program sponsored by the FBI would require payment of a $13.00 fee at the time of initial application that would cover the cost of fingerprint retention for as long as a license is valid.

Fingerprint retention technology would completely automate the manual practice of matching arrest records with licensees. Moreover, participation in the fingerprint retention program at the federal level ensures that fingerprint based arrests of licensees in any jurisdiction in the United States would immediately be delivered to the Department. The Department is required to inform the agency that employs the licensee of any arrest, and may take action against the license if appropriate.

Licensees, whose licenses expire prior to January 2016, are currently not required to re-submit their fingerprints or pay the processing and retention fees that are set out in this bill. The bill will require renewal licensees to re-submit their fingerprints and pay the processing and retention fees to be enrolled in the federal and statewide automated biometric identification system if they have not already done so during initial licensure. These licensees will only have to submit fingerprints and pay both processing fees upon the first renewal; all subsequent renewals will only require the licensee to pay statewide retention fees.

Section 2 amends s. 493.6105, F.S. (initial licensure), **Section 4** amends s. 493.6108, F.S. (FDLE retention), **Section 5** amends s. 493.6113, F.S. (renewal), **Section 6** amends s. 493.6115, F.S. (conforming changes), **Section 7** amends s. 493.6118, F.S. (conforming changes).

Residency Requirements

When applying for a private security, private investigative, and repossession license under s. 493.6106, F.S., there is currently a 90-day state residency requirement for a legal resident aliens seeking licensure that is no longer required under Federal law.

The Department of Justice amended regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives by removing the 90-day residency requirement for aliens lawfully present in the United

States to purchase or acquire firearms in 2012. Deleting the 90-day residency requirement that still exists in Florida law for legal resident aliens will make Florida law consistent with Federal law.

Section 3 amends s. 493.6106, F.S.

Concealed Weapon Licensing Law

Live Fire Requirements

When providing the qualifying training for the Florida concealed weapon license, s. 790.06, F.S., states that a firearms trainer "must maintain records certifying that he or she observed the student safely handle and discharge a firearm;" however, the language is unclear as to whether this observation must be made in the presence of the trainer and not reviewed remotely or from a prerecording. Further, it is unclear if the firearms trainer may use simulated ammunition or firearms to conduct the training.

The bill will create a requirement that a student taking a course, to qualify for a concealed weapon license, must discharge an actual firearm using functional ammunition in the physical presence of a trainer. Thus, firearms instructors will be required to use actual firearms and live ammunition when providing firearms training and the student will be required to discharge a firearm in the physical presence of the trainer, not via Internet video technologies such as Skype. The NRA is supportive of the proposed changes.

Notice of Service Requirements

In order to serve an administrative complaint when an agency seeks to revoke or suspend a license, s. 120.60(5), F.S., requires either personal service or service by certified mail. When an agency cannot personally serve a licensee and service by certified mail is returned undeliverable, the agency must publish notice of revocation or suspension once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address.

A large number of concealed weapons license holders live outside the state of Florida (176,315 as of the end of Fiscal Year 2013-2014).[6] The publication requirements for notice of license holders out of state has increased costs associated with the publication of legal notices and the Department believes that newspaper publication of a license holder's name and license number may violate s. 790.0601, F.S., which makes the personal identifying information of a concealed weapon license holder confidential and exempt from disclosure.

This bill would provide that legal notification to concealed weapon license holders be conducted via first-class, postage-paid mail addressed to the licensee at his or her last known mailing address, or by e-mail if the licensee provided an e-mail address. The Department does not have to attempt service by personal service or certified mail before sending notice by regular mail or e-mail. The proposed statutory change will completely eliminate all future publication costs for the Department.

This change may have some constitutional concerns. See Comments, Constitutional Issues for discussion.

Renewal Notarization

Concealed weapon license holders are required to have renewal affidavits notarized before submitting pursuant to s. 790.06(11), F.S. In order to develop a system to automate the concealed weapon license renewal application process online, the notarization requirement will need to be removed as it is currently impossible to notarize an online submitted form. The Department indicated that a total of 1,282,036 concealed weapons licenses will expire over the next six years, and expects a renewal rate

[6] Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 995, p. 6 (Mar. 3, 2015).

between 53 and 78 percent, for approximately 800,000 license renewals. The Department is concerned that the volume of renewals will be overwhelming without an online, automated system in place to assist.[7]

The bill removes the notarization requirement for concealed weapon licenses renewals and replaces it with a requirement that the form is submitted under oath and under penalty of perjury.

Concealed Weapon License Fees

Concealed weapon license holders are required to pay an initial license fee of $70, and a renewal fee of $60. The bill lowers the fees for concealed weapon licenses to $60 for the initial license, and $50 for the renewal.

Section 21 amends s. 790.06, F.S.

Tax Collectors

As of July 1, 2014, select tax collectors' offices began accepting Florida Concealed Weapon or Firearm License applications on behalf of the Department. The service was made possible by the implementation of Chapter 2014-205, Laws of Florida. Under the provisions of this bill, the Department can enter into a Memorandum of Understanding (MOU) with any constitutionally elected tax collector in Florida to allow the tax collector to provide concealed weapon license application intake services in his or her county.

The Department reports that this program has been successful and may help alleviate the anticipated workload of increasing new and renewal concealed weapon license applications.

The bill provides that a tax collector who is accepting concealed weapon license applications may now print and furnish a renewal license to a concealed weapon license holder who submits a complete license renewal application to a tax collector's office, after the Department approves the renewal. The Department believes that allowing tax collectors to print concealed weapon licenses at the time of submission of a license renewal application will be major convenience to license holders.

Section 22 amends s. 790.0625, F.S.

Florida Veteran Identification Card

Florida does not have an identification card for veterans, and the Department of Defense (DOD) only issues identification cards to veterans who are authorized to receive medical care and other benefits provided by Federal law.[8] Some individuals may not be provided an identification card from the DOD, and legislators have heard from constituents who wish for a method of proving their veteran status.

Chapter 2011-96, Laws of Florida, amended ss. 322.14, and 322.051, F.S., to allow a veteran to add a 'V' to his or her driver's license or identification card if the veteran provides a copy of his or her DD-214 discharge papers and pays a $1 fee. This fee is only required once and is in addition to any replacement or renewal fees.[9]

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[7] Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 995, p. 7 (Mar. 3, 2015).
[8] Department of Defense, *DoD ID Card Frequently Asked Questions (FAQs)*, p. 4 (March 2014) *available at* http://www.cac.mil/docs/cacmil_faqs.pdf.
[9] Florida Highway Safety and Motor Vehicles, *New Law Permits Veterans Designation on Florida Driver License,* http://www.flhsmv.gov/news/pdfs/pr071211veterans.pdf (last visited Apr. 1, 2015).

The bill creates a Florida veteran identification card. Veterans may submit an application to the Department with a copy of their DD Form 214, DD Form 256, or WD AGO discharge papers, a photograph, and a $15 fee. The Department will use the fees to run the program, and any balance of funds after costs will be distributed to the Friends of Florida State Forests, Inc., for the sole purpose of supporting Operation Outdoor Freedom, a project that provides recreational opportunities to wounded veterans.

The bill provides an appropriation of $254,300 from the Division of Licensing Trust Fund and one position to DACS to implement s. 570.695, F.S.

Section 18 creates s. 570.695, F.S.

Section 19 provides an appropriation.

Section 23 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Recurring

General Inspection Trust Fund

Although the number of veterans and veterans' spouses who will apply for the waivers is unknown, the Department estimates the revenue loss based on the following information. An estimated 231,000 veterans from the Afghanistan and Iraq wars live in Florida, which is 1.5 percent of the total population based on 2010 Census data. To estimate the potential loss, the Department doubled the percentage (3 percent) to account for spouses of military veterans who may be interested in the waivers. Using FY 2013-2014 data, the Department calculated the potential loss for each program and license type by multiplying the total number of applications from each program by 3 percent to determine the total number of applications waived. The number of applications waived was then multiplied by the corresponding fee according to program/license type to determine the loss of revenue.

	(FY 15-16)	(FY 16-17)	(FY 17-18)
Military Veteran Fee Waiver	($49,350)	($49,350)	($49,350)
Safety Standards for Amusement Rides (2 X $1,140)	($2,280)	($2,280)	($2,280)
General Inspection Trust Fund Loss	**($51,630)**	**($51,630)**	**($51,630)**

Division of Licensing Trust Fund

Concealed Weapon License Fees

New CW License Fee Reduction ($10.00)	($1,280,000)	($1,280,000)	($1,280,000)
Renewal CW License Fee Reduction ($10.00)	($1,103,050)	($1,743,740)	($1,397,430)
Division of Licensing Trust Fund Loss	**($2,383,050)**	**($3,023,740)**	**($2,677,430)**

The Division indicates it can absorb the revenue loss.

Florida Veteran Identification Card	$546,729	$820,094	$820,094

Based on the state of Virginia's 34 month history of issuing a statewide veteran photo ID card, the department estimates a net percentage of 5.1 percent on the number of eligible veteran cards issued in one year. This analysis reflects receiving and processing ID card applications beginning January 1, 2016, so that year one operating costs are for six months only, with year two costs reflecting 12 months, although at a lower volume, consistent with the state of Virginia's experience.

2. Expenditures:

Recurring

Division of Licensing Trust Fund

Notice of Service of Process for			
Out of State Licensees	($158,948)	($158,948)	($158,948)

The Department expects to reduce expenditures related to publishing costs for notifying out-of-state licensees of revocation or suspension of their concealed weapon license.

Florida Veteran Identification Card

Salary Rate 31,109			
Salaries & Benefits			
(1FTE) Quality Control/Scheduling Supervisor	$48,248	$48,248	$48,248
OPS			
(3.0) Data Processing Control Specialists	$46,500	$93,000	$93,000
Expenses			
Standard Package	$10,048	$6,166	$6,166
Contracted Services	$12,400	$12,400	$12,400
Human Resources Transfer to DMS	$704	$704	$704
Total Recurring Costs	**$117,900**	**$160,518**	**$160,518**
Nonrecurring			
Contracted Services			
Contracted Programming	$136,400		
Total Recurring/Nonrecurring Costs	**$254,300**	**$160,518**	**$160,518**
Nonoperating Costs			
Administrative/Indirect Cost	$6,860	$6,860	$6,860
Information Technology Support	$4,231	$4,231	$4,231
General Revenue Service Charge	$21,869	$32,804	$32,804
Total Nonoperating Costs	**$32,960**	**$43,895**	**$43,895**
Net Loss/Increase	**$259,469**	**$615,681**	**$615,681**

Any balance of funds after costs will be distributed to Friends of Florida State Forests to support Operation Outdoor Freedom.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The fiscal impact is indeterminate as the number of approved tax collectors wanting to print a renewal license is unknown. In addition, the Department will furnish within existing resources any printers for approved tax collectors wanting to print and furnish a renewal license.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill waives the initial application fee for veterans and their spouses for the following industries and professions: surveyors and mappers, health studios, telemarketing, intrastate movers, LP gas, pawn broking, motor vehicle repair, and travel.

The bill eliminates the licensure fee for facilities operating as a charitable entity that have amusement rides that are not open to the general public and do not allow for day rates.

The bill requires individuals who are seeking licensure or renewing a license under chapter 493 (private investigation, recovery, and security industries) to participate in the state and federal fingerprint retention programs. Participation in the fingerprint retention program sponsored by the FBI would require payment of a $13.00 fee at the time of initial application that would cover the cost of fingerprint retention for as long as a license is valid. Participation at the statewide level would require payment of an annual fee of $6.00 for each year that a license is valid. Licensees, whose permits were issued prior to January 2016, must submit a fingerprint set at the time of renewal to be included in the new retention program. The national background check is $14.75 and the state background check is $15.00. Both are one-time fees.

D. FISCAL COMMENTS:

Fingerprint Retention

New Applicants	(FY 15-16)	(FY 16-17)	(FY 17-18)
Federal Bureau of Investigation	$443,118	$443,118	$443,118
Florida Department of Law Enforcement	$204,516	$204,516	$204,516
Subtotal:	$647,634	$647,634	$647,634

The Department estimates that 34,086 new applicants with a two-year license pay FBI's one-time $13.00 fingerprint retention fee for life of license and FDLE's $6 annual fingerprint retention fee (no charge first year of new license only).

Renewals	(FY 15-16)	(FY 16-17)	(FY 17-18)
Federal Bureau of Investigation	$1,100,288	$1,100,288	$ 0
Florida Department of Law Enforcement	$ 832,650	$ 832,650	$513,285
Subtotal:	$1,932,938	$1,932,938	$513,285

The Department estimates 39,650 renewal applicants pay FBI's one-time $13 fingerprint retention fee for as long as the license is valid and the national background check fingerprint fee of $14.75. Since the fingerprint retention fee and the background check fee are one-time only, there will be no payment to the FBI for renewals of the two-year license after FY 16-17. The FDLE's fingerprint retention fee is $6

annually and the state background check fingerprint fee is a one-time only fee of $15. An estimated 1,020 of the 39,650 have three-year licenses and are captured in FY 17-18.

These fees will be collected by the Department and deposited in the Division of Licensing Trust Fund where they will then be disbursed to the FBI or FDLE for the administration of their fingerprint retention programs.

The bill provides an appropriation of $254,300 from the Division of Licensing Trust Fund and one position to DACS to implement s. 570.695, F.S.

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:

   Notice of Service Requirements

   Procedural Due Process: Generally

   The Due Process Clauses of the Fifth and Fourteenth Amendments intend fair process. "An elementary and fundamental requirement of due process in any proceeding that is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection."[10] The degree to which due process protections apply varies with the nature of the interests implicated.[11]

   The bill's removal of notice by personal service, certified mail, or publication for the suspension or revocation of concealed weapon licenses and replacing such notice with a requirement to send notice by regular mail or e-mail may not implicate procedural due process concerns because it may not, under all the circumstances, apprise an interested party of the action. Further, the Department will have difficulty proving that notice was effective in any case, as they would be able to do with personal service or certified mail, and will have to rely upon the rebuttable presumption that notice sent through regular mail is received by the intended party.

   At least one District Court has found that mailed notice meets state and federal due process requirements when the initial correspondence is sent certified and returned unclaimed, and then subsequent uncertified correspondence reaches the addressee uneventfully.[12] However, it is unclear if sending notice only through uncertified mail would be reasonably calculated, under all circumstances, to apprise an interested party of the action against them and afford them an opportunity to object.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

[10] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).
[11] *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).
[12] *Shelley v. State, Dep't of Fin. Servs.*, 846 So. 2d 577, 577 (Fla. 3d DCA 2003).

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Business & Professions Subcommittee adopted one amendment. The amendment reduced the fee for initial and renewal concealed weapon licenses. The bill was reported favorably as a committee substitute.

On March 30, 2015, the Appropriations Committee adopted one amendment. The amendment creates a Florida veteran identification card and provides an appropriation. 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 consumer licensing; amending s. 472.015, F.S.; waiving the initial land surveying and mapping license fee for certain veterans of the United States Armed Forces, the spouses of such veterans, or a business entity that has a majority ownership held by such a veteran or spouse; amending s. 493.6105, F.S.; requiring that the initial license application for private investigative, private security, and repossession services include payment of fingerprint processing and fingerprint retention fees; amending s. 493.6106, F.S.; deleting a requirement for additional documentation establishing state residency for private investigative, private security, and repossession service licenses; amending s. 493.6108, F.S.; directing the Department of Law Enforcement to retain fingerprints submitted for private investigative, private security, and repossession service licenses, to enter such fingerprints into the statewide automated biometric identification system and the national retained print arrest notification program, and to report any arrest record information to the Department of Agriculture and Consumer Services; directing the Department of Agriculture and Consumer Services to provide information about an arrest within the state to the agency that employs the licensee;

amending s. 493.6113, F.S.; requiring a person holding a private investigative, private security, or repossession service license issued before a certain date to submit upon first renewal of the license a full set of fingerprints and a fingerprint processing fee to cover the cost of entering the fingerprints in the statewide automated biometric identification system; amending ss. 493.6115 and 493.6118, F.S.; conforming cross-references; amending s. 501.015, F.S.; waiving the initial health studio registration fee for certain veterans of the United States Armed Forces, the spouses of such veterans, or a business entity that has a majority ownership held by such a veteran or spouse; amending s. 501.0581, F.S.; transferring enforcement authority of the Florida Commercial Weight-Loss Practices Act from the Department of Agriculture and Consumer Services to the Department of Health; amending s. 501.0583, F.S.; transferring enforcement authority of penalties for selling, delivering, bartering, furnishing, or giving weight-loss pills to persons under the age of 18 from the Department of Agriculture and Consumer Services to the Department of Health; amending s. 501.605, F.S.; prohibiting the use of a mail drop as a street address for the principal location of a commercial telephone seller; amending s. 501.607, F.S.; waiving the initial

commercial telephone seller license fee for certain veterans of the United States Armed Forces, the spouses of such veterans, or a business entity that has a majority ownership held by such a veteran or spouse; amending s. 507.03, F.S.; waiving the initial registration fee for an intrastate movers license for certain veterans of the United States Armed Forces, the spouses of such veterans, or a business entity that has a majority ownership held by such a veteran or spouse; amending s. 527.02, F.S.; waiving the original liquefied petroleum gas dealer license fee for certain veterans of the United States Armed Forces, the spouses of such veterans, or a business entity that has a majority ownership held by such a veteran or spouse; amending s. 539.001, F.S.; waiving the initial pawnbroker license fee for certain veterans of the United States Armed Forces, the spouses of such veterans, or a business entity that has a majority ownership held by such a veteran or spouse; amending s. 559.904, F.S.; waiving the initial motor vehicle repair shop registration fee for certain veterans of the United States Armed Forces, the spouses of such veterans, or a business entity that has a majority ownership held by such a veteran or spouse; amending s. 559.928, F.S.; waiving the initial seller of travel registration fee for certain veterans

of the United States Armed Forces, the spouses of such veterans, or a business entity that has a majority ownership held by such a veteran or spouse; creating s. 570.695, F.S.; authorizing the department to issue Florida veteran identification cards; providing eligibility, application, and fee requirements; requiring that fee proceeds be deposited into the Division of Licensing Trust Fund; providing an appropriation and authorizing a position; amending s. 616.242, F.S.; deleting an obsolete provision allowing fair owners to post a bond rather than carry a certificate of insurance; exempting water-related amusement rides operated by lodging and food service establishments and membership campgrounds, amusement rides at private, membership-only facilities, and nonprofit permanent facilities from certain safety standards; authorizing owners or managers of amusement rides to use alternate forms to record employee training and ride inspections; amending s. 790.06, F.S.; requiring firearm course instructors to maintain records attesting to the use of live fire with specified firearms and ammunition by students in his or her physical presence; revising the initial and renewal fees for a concealed weapon or firearm license; requiring notice of the suspension or revocation of a concealed weapon or firearm license or

the suspension of the processing of an application for such license to be given by personal delivery, first-class mail, or e-mail; requiring concealed weapon or firearm license renewals to include an affidavit submitted under oath and under penalty of perjury; amending s. 790.0625, F.S.; authorizing certain tax collector offices, upon approval and confirmation of license issuance by the Department of Agriculture and Consumer Services, to print and deliver concealed weapon or firearm licenses; providing an effective date.

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

Section 1. Subsection (3) of section 472.015, Florida Statutes, is amended to read:

472.015 Licensure.—

(3)(a) Before the issuance of any license, the department may charge an initial license fee as determined by rule of the board. Upon receipt of the appropriate license fee, except as provided in subsection (6), the department shall issue a license to any person certified by the board, or its designee, as having met the applicable requirements imposed by law or rule. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination.

(b) The department shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214 or NGB Form 22; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214 or NGB Form 22 and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214 or NGB Form 22, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 2. Paragraph (j) of subsection (3) of section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

(3) The application must contain the following information concerning the individual signing the application:

(j) A full set of fingerprints, a fingerprint processing fee, and a fingerprint retention fee to cover the cost of

retaining the fingerprints in the statewide automated biometric identification system pursuant to s. 493.6108(2)(a) and the cost of enrolling the fingerprints in the national retained print arrest notification program when the program is operational and the Department of Law Enforcement begins participation. The fingerprint processing and retention fees shall ~~to~~ be established by rule of the department based upon costs determined by state and federal agency charges and department processing costs. An applicant who has~~, within the immediately preceding 6 months,~~ submitted such fingerprints and fees ~~fee~~ for licensing purposes under this chapter and who still holds a valid license is not required to submit another set of fingerprints or another fingerprint processing fee. An applicant who holds multiple licenses issued under this chapter is required to pay only a single fingerprint retention fee.

Section 3. Paragraph (f) of subsection (1) of section 493.6106, Florida Statutes, is amended to read:

493.6106 License requirements; posting.—

(1) Each individual licensed by the department must:

(f) Be a citizen or permanent legal resident alien of the United States or have appropriate authorization issued by the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

1. An applicant for a Class "C," Class "CC," Class "D," Class "DI," Class "E," Class "EE," Class "M," Class "MA," Class "MB," Class "MR," or Class "RI" license who is not a United

States citizen must submit proof of current employment authorization issued by the United States Citizenship and Immigration Services or proof that she or he is deemed a permanent legal resident alien by the United States Citizenship and Immigration Services.

2. An applicant for a Class "G" or Class "K" license who is not a United States citizen must submit proof that she or he is deemed a permanent legal resident alien by the United States Citizenship and Immigration Services~~, together with additional documentation establishing that she or he has resided in the state of residence shown on the application for at least 90 consecutive days before the date that the application is submitted~~.

3. An applicant for an agency or school license who is not a United States citizen or permanent legal resident alien must submit documentation issued by the United States Citizenship and Immigration Services stating that she or he is lawfully in the United States and is authorized to own and operate the type of agency or school for which she or he is applying. An employment authorization card issued by the United States Citizenship and Immigration Services is not sufficient documentation.

Section 4. Subsections (2) and (3) of section 493.6108, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section, to read:

493.6108 Investigation of applicants by Department of

Agriculture and Consumer Services.—

(2)(a) The Department of Law Enforcement shall retain and enter into the statewide automated biometric identification system authorized under s. 943.05 all fingerprints submitted to the department pursuant to this chapter. The Department of Law Enforcement shall enroll such fingerprints in the national retained print arrest notification program when the program is operational and the Department of Law Enforcement begins participation. Thereafter, the fingerprints shall be available for arrest notifications required by paragraph (b) and all purposes and uses authorized for arrest fingerprints entered into the statewide automated biometric identification system.

(b) The Department of Law Enforcement shall search all arrest fingerprints against fingerprints retained pursuant to paragraph (a) and report any arrest record identified by the Department of Law Enforcement or the Federal Bureau of Investigation to the department. If the department receives information about an arrest within the state of a person who holds a valid license issued under this chapter for a crime that could potentially disqualify the person from holding such a license, the department shall provide the arrest information to the agency that employs the licensee.

Section 5. Subsection (3) of section 493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

(3)(a) Each licensee is responsible for renewing his or

her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system ~~prescribed license fee~~.

(b) In addition to the fees specified in paragraph (a), a person holding a valid license issued under this chapter before January 1, 2016, must submit upon first renewal of the license a full set of fingerprints and a fingerprint processing fee to cover the cost of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(2)(a). Subsequent renewals may be completed without submission of a set of fingerprints.

(c)~~(a)~~ Each Class "B" licensee shall additionally submit on a form prescribed by the department a certification of insurance that evidences that the licensee maintains coverage as required under s. 493.6110.

(d)~~(b)~~ Each Class "G" licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms recertification training taught by a Class "K" licensee and has complied with such other health and training requirements that the department shall adopt by rule. Proof of completion of firearms recertification training shall be submitted to the department upon completion of the training. If the licensee fails to complete the required 4 hours of annual training during the

first year of the 2-year term of the license, the license shall be automatically suspended. The licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be reinstated. If the licensee fails to complete the required 4 hours of annual training during the second year of the 2-year term of the license, the licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be renewed. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period; or

3. The applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a) and provides proof of having completed requalification training during the previous 2

years of the licensure period.

(e)~~(c)~~ Each Class "DS" or Class "RS" licensee shall additionally submit the current curriculum, examination, and list of instructors.

(f)~~(d)~~ Each Class "K" licensee shall additionally submit one of the certificates specified under s. 493.6105(6) as proof that he or she remains certified to provide firearms instruction.

Section 6. Subsection (6) of section 493.6115, Florida Statutes, is amended to read:

493.6115 Weapons and firearms.—

(6) In addition to any other firearm approved by the department, a licensee who has been issued a Class "G" license may carry a .38 caliber revolver; or a .380 caliber or 9 millimeter semiautomatic pistol; or a .357 caliber revolver with .38 caliber ammunition only; or a .40 caliber handgun; or a .45 ACP handgun while performing duties authorized under this chapter. A licensee may not carry more than two firearms upon her or his person when performing her or his duties. A licensee may only carry a firearm of the specific type and caliber with which she or he is qualified pursuant to the firearms training referenced in subsection (8) or s. 493.6113(3)(d) ~~493.6113(3)(b)~~.

Section 7. Paragraph (u) of subsection (1) of section 493.6118, Florida Statutes, is amended to read:

493.6118 Grounds for disciplinary action.—

(1) The following constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any licensee, agency, or applicant regulated by this chapter, or any unlicensed person engaged in activities regulated under this chapter.

(u) For a Class "G" licensee, failing to timely complete recertification training as required in s. 493.6113(3)(d) ~~493.6113(3)(b)~~.

Section 8. Subsection (2) of section 501.015, Florida Statutes, is amended to read:

501.015 Health studios; registration requirements and fees.—Each health studio shall:

(2) Remit an annual registration fee of $300 to the department at the time of registration for each of the health studio's business locations. The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214 or NGB Form 22; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214 or NGB Form 22 and a copy of a valid marriage license or certificate verifying

that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214 or NGB Form 22, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 9. Subsections (1) and (2) of section 501.0581, Florida Statutes, are amended to read:

501.0581 Commercial Weight-Loss Practices Act; civil remedies.—

(1) The Department of Health ~~Agriculture and Consumer Services~~ may bring a civil action in circuit court for temporary or permanent injunctive relief to enforce ~~the provisions of~~ this act and may seek other appropriate civil relief, including a civil penalty not to exceed $5,000 for each violation, for restitution and damages for injured customers, court costs, and reasonable attorney ~~attorney's~~ fees.

(2) The Department of Health ~~Agriculture and Consumer Services~~ may terminate any investigation or action upon agreement by the offender to pay a stipulated civil penalty, make restitution or pay damages to customers, or satisfy any other relief authorized herein and requested by the department.

Section 10. Subsection (3) of section 501.0583, Florida Statutes, is amended to read:

501.0583 Selling, delivering, bartering, furnishing, or giving weight-loss pills to persons under age 18; penalties; defense.—

(3) A first violation of subsection (2) or this subsection is punishable by a fine of $100. A second violation of subsection (2) or this subsection is punishable by a fine of $250. A third violation of subsection (2) or this subsection is punishable by a fine of $500. A fourth or subsequent violation of subsection (2) or this subsection is punishable by a fine as determined by the Department of Health ~~Agriculture and Consumer Services~~, not to exceed $1,000.

Section 11. Paragraph (j) of subsection (2) and paragraph (b) of subsection (5) of section 501.605, Florida Statutes, are amended to read:

501.605 Licensure of commercial telephone sellers.—

(2) An applicant for a license as a commercial telephone seller must submit to the department, in such form as it prescribes, a written application for the license. The application must set forth the following information:

(j) The complete street address of each location, designating the principal location, from which the applicant will be doing business. The street address may not be ~~If any location is~~ a mail drop~~, this shall be disclosed as such~~.

The application shall be accompanied by a copy of any: Script, outline, or presentation the applicant will require or suggest a

salesperson to use when soliciting, or, if no such document is used, a statement to that effect; sales information or literature to be provided by the applicant to a salesperson; and sales information or literature to be provided by the applicant to a purchaser in connection with any solicitation.

(5) An application filed pursuant to this part must be verified and accompanied by:

(b) A fee for licensing in the amount of $1,500. The fee shall be deposited into the General Inspection Trust Fund. The department shall waive the initial licensing fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214 or NGB Form 22; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214 or NGB Form 22 and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214 or NGB Form 22, and, if applicable, a copy of a valid marriage license or

certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 12. Paragraph (b) of subsection (2) of section 501.607, Florida Statutes, is amended to read:

501.607 Licensure of salespersons.—

(2) An application filed pursuant to this section must be verified and be accompanied by:

(b) A fee for licensing in the amount of $50 per salesperson. The fee shall be deposited into the General Inspection Trust Fund. The fee for licensing may be paid after the application is filed, but must be paid within 14 days after the applicant begins work as a salesperson. The department shall waive the initial licensing fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214 or NGB Form 22; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214 or NGB Form 22 and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the department proof that a veteran or the spouse of a veteran holds

a majority ownership in the business, a copy of the veteran's DD Form 214 or NGB Form 22, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 13. Subsection (3) of section 507.03, Florida Statutes, is amended to read:

507.03 Registration.—

(3)(a) Registration fees shall be calculated at the rate of $300 per year per mover or moving broker. All amounts collected shall be deposited by the Chief Financial Officer to the credit of the General Inspection Trust Fund of the department for the sole purpose of administration of this chapter.

(b) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214 or NGB Form 22; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214 or NGB Form 22 and a copy of a valid marriage license or certificate verifying that he or she

was lawfully married to the veteran at the time of discharge; or a business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214 or NGB Form 22, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 14. Subsection (3) of section 527.02, Florida Statutes, is amended to read:

527.02 License; penalty; fees.—

(3)(a) An ~~Any~~ applicant for an original license who submits an ~~whose~~ application ~~is submitted~~ during the last 6 months of the license year may have the original license fee reduced by one-half for the 6-month period. This provision applies ~~shall apply~~ only to those companies applying for an original license and may ~~shall~~ not be applied to licensees who held a license during the previous license year and failed to renew the license. The department may refuse to issue an initial license to an ~~any~~ applicant who is under investigation in any jurisdiction for an action that would constitute a violation of this chapter until such time as the investigation is complete.

(b) The department shall waive the original license fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by

the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214 or NGB Form 22; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214 or NGB Form 22 and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214 or NGB Form 22, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 15. Paragraph (c) of subsection (3) of section 539.001, Florida Statutes, is amended to read:

539.001 The Florida Pawnbroking Act.—

(3) LICENSE REQUIRED.—

(c) Each license is valid for a period of 1 year unless it is earlier relinquished, suspended, or revoked. Each license shall be renewed annually, and each licensee shall, initially and annually thereafter, pay to the agency a license fee of $300 for each license held. The agency shall waive the initial license fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or

spouse if the agency receives an application, in a format prescribed by the agency, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the agency a copy of his or her DD Form 214 or NGB Form 22; the spouse of a veteran must provide to the agency a copy of the veteran's DD Form 214 or NGB Form 22 and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the agency proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214 or NGB Form 22, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 16. Subsection (3) of section 559.904, Florida Statutes, is amended to read:

559.904 Motor vehicle repair shop registration; application; exemption.—

(3)(a) Each application for registration must be accompanied by a registration fee calculated on a per-year basis as follows:

1.~~(a)~~ If the place of business has 1 to 5 employees: $50.

2.~~(b)~~ If the place of business has 6 to 10 employees: $150.

3.~~(c)~~ If the place of business has 11 or more employees:

$300.

(b) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214 or NGB Form 22; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214 or NGB Form 22 and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214 or NGB Form 22, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 17. Paragraph (c) is added to subsection (2) of section 559.928, Florida Statutes, to read:

559.928 Registration.—

(2)

(c) The department shall waive the initial registration fee for an honorably discharged veteran of the United States

Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214 or NGB Form 22; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214 or NGB Form 22 and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or the business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214 or NGB Form 22, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time of discharge.

Section 18. Section 570.695, Florida Statutes, is created to read:

570.695 Florida veteran identification card.—

(1) Beginning January 1, 2016, the department may issue Florida veteran identification cards. Each card must bear a color photograph of the cardholder for verification purposes.

(2) The department shall issue a Florida veteran identification card to any applicant who:

(a) Is a veteran as defined in s. 1.01(14);

(b) Resides in this state;

(c) Submits a completed application provided by the department with accompanying documents; and

(d) Pays the application fee.

(3) The information to be included on the application is limited to the following:

(a) Full name, including first, middle or maiden, and last names;

(b) Mailing address;

(c) Branch of service;

(d) Optional contact telephone number or e-mail address; and

(e) Florida residency statement.

(4) The applicant shall submit the following documents to the department:

(a) A completed application signed and verified by the applicant under oath as provided in s. 92.525(2);

(b) A copy of the applicant's DD Form 214, DD Form 256, or WD AGO Form issued by the United States Department of Defense which displays the applicant's discharge status. Alternatively, the applicant may provide a copy of his or her valid Florida driver license bearing a capital "V" or "Veteran" designation; and

(c) A fullface color photograph of the applicant taken within the preceding 90 days in which the head, including hair, measures 7/8 inches wide and 1-1/8 inches high.

(5) The applicant shall submit a fee of $15 to cover the cost of issuing the identification card, with any balance distributed to Friends of Florida State Forests, Inc., for the sole purpose of supporting the Operation Outdoor Freedom Program.

(6) Upon receipt of the fee and the documents listed in subsection (4), the department shall:

(a) Issue the Florida veteran identification card; or

(b) Return the application as incomplete and allow the applicant to resubmit it. The application fee shall be refunded to an applicant who requests a refund based on the inability to provide a completed application. The department's determination that an application is incomplete is exempt from chapter 120.

(7) A Florida veteran identification card does not expire. If the card is lost, a replacement card shall be issued if the applicant meets the requirements of this section.

(8) All moneys collected pursuant to this section shall be deposited into the Division of Licensing Trust Fund. Notwithstanding s. 493.6117, moneys collected pursuant to this section shall not revert to the General Revenue Fund. However, this does not abrogate the requirement for payment of the service charge imposed pursuant to chapter 215.

Section 19. For the 2015-2016 fiscal year, the sums of $114,018 in recurring funds and $140,282 in nonrecurring funds are appropriated from the Division of Licensing Trust Fund to the Department of Agriculture and Consumer Services, and one

full-time equivalent position with associated salary rate of 31,109 is authorized, to implement s. 570.695, Florida Statutes, as created by this act.

Section 20. Paragraph (b) of subsection (5), paragraph (a) of subsection (10), and subsections (15) and (16) of section 616.242, Florida Statutes, are amended to read:

616.242 Safety standards for amusement rides.—

(5) ANNUAL PERMIT.—

(b) To apply for an annual permit, an owner must submit to the department a written application on a form prescribed by rule of the department, which must include the following:

1. The legal name, address, and primary place of business of the owner.

2. A description, manufacturer's name, serial number, model number and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance ~~or bond~~ for each amusement ride.

4. An affidavit of compliance that the amusement ride was inspected in person by the affiant and that the amusement ride is in general conformance with the requirements of this section and all applicable rules adopted by the department. The affidavit must be executed by a professional engineer or a qualified inspector at least ~~no earlier than~~ 60 days before, but not later than, the date ~~of the filing of~~ the application is filed with the department. The owner shall request inspection

and permitting of the amusement ride within 60 days after ~~of~~ the date ~~of filing~~ the application is filed with the department. The department shall inspect and permit the amusement ride within 60 days after the date ~~filing~~ the application is filed with the department.

5. If required by subsection (6), an affidavit of nondestructive testing dated and executed at least ~~no earlier than~~ 60 days before ~~prior to~~, but not later than, the date ~~of the filing of~~ the application is filed with the department. The owner shall request inspection and permitting of the amusement ride within 60 days after ~~of~~ the date ~~of filing~~ the application is filed with the department. The department shall inspect and permit the amusement ride within 60 days after the date ~~filing~~ the application is filed with the department.

6. A request for inspection.

7. Upon request, the owner shall, at no cost to the department, provide the department a copy of the manufacturer's current recommended operating instructions in the possession of the owner, the owner's operating fact sheet, and any written bulletins in the possession of the owner concerning the safety, operation, or maintenance of the amusement ride.

(10) EXEMPTIONS.—

(a) This section does not apply to:

1. Permanent facilities that employ at least 1,000 full-time employees and that maintain full-time, in-house safety inspectors. Furthermore, the permanent facilities must file an

affidavit of the annual inspection with the department, on a form prescribed by rule of the department. Additionally, the Department of Agriculture and Consumer Services may consult annually with the permanent facilities regarding industry safety programs.

2. Any playground operated by a school, local government, or business licensed under chapter 509, if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills, or excitement.

3. Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts.

4. Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition, and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show.

5. Skating rinks, arcades, laser ~~lazer~~ or paint ball war games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, airboats, helicopters, airplanes, parasails, hot air or helium balloons whether tethered or untethered, theatres, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, side shows, live animal rides, or live animal shows.

6. Go-karts operated in competitive sporting events if participation is not open to the public.

7. Nonmotorized playground equipment that is not required to have a manager.

8. Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less.

9. Facilities described in s. 549.09(1)(a) when such facilities are operating cars, trucks, or motorcycles only.

10. Battery-powered cars or other vehicles that are designed to be operated by children 7 years of age or under and that cannot exceed a speed of 4 miles per hour.

11. Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour.

12. A water-related amusement ride operated by a business licensed under chapter 509 if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates.

13. An amusement ride at a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public, is not primarily engaged in providing amusement, pleasure, thrills, or

excitement, and does not offer day rates.

14. A nonprofit permanent facility registered under chapter 496 which is not open to the general public.

(15) INSPECTION BY OWNER OR MANAGER.—Before ~~Prior to~~ opening on each day of operation and before ~~prior to~~ any inspection by the department, the owner or manager of an amusement ride must inspect and test the amusement ride to ensure compliance with all requirements of this section. Each inspection must be recorded on a form prescribed by rule of the department and signed by the person who conducted the inspection. In lieu of the form prescribed by rule of the department, the owner or manager may request approval of an alternate form if the alternate form includes, at a minimum, the information required on the form prescribed by rule of the department. Inspection records of the last 14 daily inspections must be kept on site by the owner or manager and made immediately available to the department upon request.

(16) TRAINING OF EMPLOYEES.—The owner or manager of an ~~any~~ amusement ride shall maintain a record of employee training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride~~,~~ on a form prescribed by rule of the department. In lieu of the form prescribed by rule of the department, the owner or manager may request approval of an alternate form if the alternate form includes, at a minimum, the information required on the form prescribed by rule of the department. The training record must

be kept on site by the owner or manager and made immediately available to the department upon request. Training may not be conducted when an amusement ride is open to the public unless the training is conducted under the supervision of an employee who is trained in the operation of that ride. The owner or manager shall certify that each employee is trained, as required by this section and any rules adopted thereunder, on the amusement ride for which the employee is responsible.

Section 21. Paragraph (h) of subsection (2), paragraph (b) of subsection (5), subsection (10), and paragraph (a) of subsection (11) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:

(h) Demonstrates competence with a firearm by any one of the following:

1. Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;

2. Completion of any National Rifle Association firearms safety or training course;

3. Completion of any firearms safety or training course or class available to the general public offered by a law enforcement, junior college, college, or private or public institution or organization or firearms training school,

utilizing instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services;

4. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;

6. Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or

7. Completion of any firearms training or safety course or class conducted by a state-certified or National Rifle Association certified firearms instructor;

A photocopy of a certificate of completion of any of the courses or classes; ~~or~~ an affidavit from the instructor, school, club, organization, or group that conducted or taught such ~~said~~ course or class attesting to the completion of the course or class by the applicant; or a copy of any document that ~~which~~ shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this paragraph. A~~; any~~ person who conducts a course pursuant to subparagraph 2., subparagraph 3., or subparagraph

7., or who, as an instructor, attests to the completion of such courses, must maintain records certifying that he or she observed the student safely handle and discharge the firearm in his or her physical presence and that the discharge of the firearm included live fire using a firearm and ammunition as defined in s. 790.001;

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

(b) A nonrefundable license fee of up to $60 ~~$70~~ if he or she has not previously been issued a statewide license or of up to $50 ~~$60~~ for renewal of a statewide license. The cost of processing fingerprints as required in paragraph (c) shall be borne by the applicant. However, an individual holding an active certification from the Criminal Justice Standards and Training Commission as a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the licensing requirements of this section. If such individual wishes to receive a concealed weapon ~~weapons~~ or firearm ~~firearms~~ license, he or she is exempt from the background investigation and all background investigation fees~~,~~ but must pay the current license fees regularly required to be paid by nonexempt applicants. Further, a law enforcement officer, a correctional officer, or a correctional probation officer as defined in s. 943.10(1), (2), or (3) is exempt from the required fees and background

investigation for ~~a period of~~ 1 year after his or her retirement.

(10) A license issued under this section shall be suspended or revoked pursuant to chapter 120 if the licensee:

(a) Is found to be ineligible under the criteria set forth in subsection (2);

(b) Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;

(c) Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23;

(d) Is found guilty of a crime under the provisions of chapter 893, or similar laws of any other state, relating to controlled substances;

(e) Is committed as a substance abuser under chapter 397, or is deemed a habitual offender under s. 856.011(3), or similar laws of any other state;

(f) Is convicted of a second violation of s. 316.193, or a similar law of another state, within 3 years <u>after</u> ~~of~~ a <u>first</u> ~~previous~~ conviction of such section~~,~~ or similar law of another state, even though the first violation may have occurred <u>before</u> ~~prior to~~ the date on which the application was submitted;

(g) Is adjudicated an incapacitated person under s. 744.331, or similar laws of any other state; or

(h) Is committed to a mental institution under chapter 394, or similar laws of any other state.

Notwithstanding s. 120.60(5), notice of the suspension or revocation of a concealed weapon or firearm license or the suspension of the processing of an application for such license shall be given by personal delivery to the licensee, by first-class mail in an envelope, postage prepaid, addressed to the licensee at his or her last known mailing address furnished to the department, or by e-mail if the licensee has provided an e-mail address to the department. Such mailing or sending of e-mail by the department constitutes notification, and any failure by the person to receive the mailed or e-mailed notice does not stay the effective date or term of the suspension or revocation. The giving of notice by mail is complete upon expiration of 20 days after deposit in the United States mail. Proof of the giving of notice shall be made by entry in the records of the department that such notice was given. The entry is admissible in the courts of this state and constitutes sufficient proof that such notice was given.

(11)(a) At least ~~No less than~~ 90 days before the expiration date of the license, the Department of Agriculture and Consumer Services shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of Agriculture and Consumer Services. The licensee must renew his or her license on or before the expiration date by filing with the Department of Agriculture and Consumer Services the renewal form containing an ~~a notarized~~ affidavit submitted under oath and under penalty of perjury stating that

the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3), a color photograph as specified in paragraph (5)(e), and the required renewal fee. Out-of-state residents must also submit a complete set of fingerprints and fingerprint processing fee. The license shall be renewed upon receipt of the completed renewal form, color photograph, appropriate payment of fees, and, if applicable, fingerprints. Additionally, a licensee who fails to file a renewal application on or before its expiration date must renew his or her license by paying a late fee of $15. A license may not be renewed 180 days or more after its expiration date, and such a license is deemed to be permanently expired. A person whose license has been permanently expired may reapply for licensure; however, an application for licensure and fees under subsection (5) must be submitted, and a background investigation shall be conducted pursuant to this section. A person who knowingly files false information under this subsection is subject to criminal prosecution under s. 837.06.

Section 22. Subsection (8) is added to section 790.0625, Florida Statutes, to read:

790.0625 Appointment of tax collectors to accept applications for a concealed weapon or firearm license; fees; penalties.—

(8) Upon receipt of a completed renewal application, a new color photograph, and appropriate payment of fees, a tax collector authorized to accept renewal applications for

concealed weapon or firearm licenses under this section may, upon approval and confirmation of license issuance by the department, print and deliver a concealed weapon or firearm license to a licensee renewing his or her license at the tax collector's office.

Section 23. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 997 Pub. Rec./Department of Agriculture and Consumer Services
SPONSOR(S): Government Operations Subcommittee, Trumbull
TIED BILLS: CS/CS/HB 995 **IDEN./SIM. BILLS:** CS/CS/SB 1446

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N	Butler	Luczynski
2) Government Operations Subcommittee	12 Y, 0 N, As CS	Williamson	Williamson
3) Regulatory Affairs Committee		Butler BSB	Hamon K.W.H.

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (Department) collaborates with state and federal investigative agencies when pursuing remedies for administrative and civil investigations, most specifically as it relates to the Department's regulation of charitable organizations. Many charitable organizations operate both inside and outside of Florida.

Florida's public records laws do not allow the Department to keep information used in administrative and civil investigations non-public after it has been provided from another state or federal agency, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS). Due to the Department's inability to agree to maintain the confidentiality of investigative data, they are unable to participate in data sharing with several state and federal agencies.

In 2014, Chapter 2014-122, Laws of Florida, increased oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors and charged the Department with the enforcement and regulation of these entities.

This bill, which is contingent upon the passage of House Bill 995, creates a public record exemption for criminal or civil intelligence or investigative information or any other information held by the Department as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency. The bill authorizes the Department to release the information in certain instances.

The public record exemption does not apply to information held by the Department as part of an independent examination or investigation conducted by the Department.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

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

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, section 24 of the Florida Constitution provides that:

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1)(a), F.S., provides that every person who has custody of a public record must permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such

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[1] s. 1390, 1391 F.S. (Rev. 1892).
[2] FLA. CONST. art. I, s. 24.
[3] ch. 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.
[5] s. 119.011(12), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[8] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[9]

Only the Legislature is authorized to create exemptions to open government requirements.[10] Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[11] A bill enacting an exemption[12] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[13]

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[14] provides for the systematic review, through a five-year cycle ending October 2 of the fifth year following enactment, of an exemption from public records requirements.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[15] An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of the individual under this provision is exempted.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[16]

The Department of Agriculture and Consumer Services

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

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and

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[8] 85-62 Fla. Op. Att'y Gen. (1985).
[9] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).
[10] FLA. CONST. art. I, s. 24.
[11] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So.2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So.2d 567, 569 (Fla. 1999).
[12] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[13] FLA. CONST. art. I, s. 24.
[14] s. 119.15, F.S.
[15] s. 119.15(6)(b), F.S.
[16] *Id.*

- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.

The Department investigates and regulates several professions in the State of Florida, and most recently the Department's oversight and regulation of charitable organizations was significantly expanded. In 2014, Chapter 2014-122, Laws of Florida, increased oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors and charged the Department with the enforcement and regulation of these entities.

Florida's public records laws do not allow the Department to keep information used in administrative and civil investigations non-public after it has been provided from another state or federal agency, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS). Due to the Department's inability to agree to maintain the confidentiality of investigative data, it is unable to participate in data sharing with several state and federal agencies.

The FTC operates a Consumer Sentinel database that is protected from public record disclosure and can only be provided to a state agency that agrees to not disseminate the information. This database contains information on subjects related to:

- Identity Theft
- Do-Not-Call Registry violations
- Computers, the Internet, and Online Auctions
- Telemarketing Scams
- Advance-fee Loans and Credit Scams
- Immigration Services
- Sweepstakes, Lotteries, and Prizes
- Business Opportunities and Work-at-Home Schemes
- Health and Weight Loss Products
- Debt Collection, Credit Reports, and Financial Matters

The IRS has expressed a willingness to share certain information, on a case by case basis, with the understanding that such information is not disseminated beyond the agency requesting the data. The IRS has access to tax filing information that would be very valuable to the Department when investigating whether an organization is observing Florida's laws.

Effect of the Bill

This bill, which is contingent upon the passage of House Bill 995, creates a public record exemption for criminal or civil intelligence or investigative information or any other information held by the Department as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency. The Department may obtain, use, and release the information in accordance with the conditions imposed by the joint or multi-agency agreement.

The public record exemption does not apply to information held by the Department as part of an independent examination or investigation conducted by the Department.

The Department may release the confidential and exempt information in the furtherance of its official duties and responsibilities, or to another governmental agency in the furtherance of its official duties and responsibilities.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 creates s. 570.077, F.S., relating to confidentiality of intelligence or investigative information.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may create a minimal fiscal impact on the Department because staff responsible for complying with public records requests could require training related to the creation of the public records exemption. In addition, the Department could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

   Vote Requirement
   Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for information held by the Department as part of a joint or multiagency examination or investigation. The exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Agriculture and Consumer Services
According to the Department, adopting this public records exemption will increase efficiency in investigations by saving time on developing leads, witness data, and victim data. Further the Department believes that it will be able to field consumer complaints related to information from subjects available in the FTC's Consumer Sentinel database.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Combines the public record exemptions provided in the original bill in order to remove any redundancy.
- Removes the provision requiring the public record exemption to be applied retroactively, because the Department currently does not collect the information being protected by the bill.
- Authorizes the Department to share the confidential and exempt information with another governmental agency as part of its lawful duties and responsibilities.

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

A bill to be entitled

An act relating to public records; creating s. 570.077, F.S.; providing an exemption from public records requirements for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer Services as part of an investigation with another state or federal regulatory, administrative, or criminal justice agency; providing exceptions to the exemption; providing applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 570.077, Florida Statutes, is created to read:

570.077 Confidentiality of intelligence or investigative information.—

(1) Criminal or civil intelligence or investigative information or any other information held by the department as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The department may

CODING: Words stricken are deletions; words underlined are additions.

obtain, use, and release the information in accordance with the conditions imposed by the joint or multiagency agreement.

(2) The department may release information that is made confidential and exempt under subsection (1):

(a) In the furtherance of its official duties and responsibilities.

(b) To another governmental agency in the furtherance of its official duties and responsibilities.

(3) The public records exemption provided in subsection (1) does not apply to information held by the department as part of an independent examination or investigation conducted by the department.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer Services as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Without the exemption, the department will be unable to obtain information that could assist it in pursuing violations of law

under its jurisdiction. With this exemption, the department should increase efficiency of investigations by saving time on developing investigative leads, witness data, and victim data. Furthermore, the exemption is necessary to enable the department to participate in joint or multiagency investigations and examinations. Without the exemption, the department would continue to be excluded from information due to the inability to maintain investigative confidentiality. Without the sharing and coordination of information, governmental agencies may be required to conduct duplicative independent investigations or examinations in order to meet their regulatory responsibilities. With this exemption, the department will strengthen relationships with other local, state, and federal agencies, allowing them to become more efficient by sharing critical investigative data.

Section 3. This act shall take effect upon becoming a law, if CS/HB 995 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1239 Voter Control of Gambling Expansion in Florida
SPONSOR(S): Young
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Affairs Committee		Anstead	Hamon
2) Finance & Tax Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

This joint resolution proposes to create Section 29 of Article X of the Florida Constitution, relating to voter control of gambling expansion. The joint resolution requires a constitutional amendment proposed by initiative petition to expand gambling in any fashion in the state.

Expansion of gambling is defined to include the introduction of any additional types of games or the introduction of gambling at any facility not conducting gambling as of March 15, 2015, or expressly authorized by statute this session. Gambling is defined consistent with federal law.

The resolution does not alter the Legislature's ability to restrict, regulate, or tax gambling activity in Florida.

The resolution does not limit the State of Florida's ability to negotiate a state-tribal compact under the federal Indian Gaming Regulation Act or to enforce any current compact.

The joint resolution requires publication prior to the election. The required publication of the amendment would have an effect on expenditures. The Division of Elections within the Department of State estimates that the full publication costs for advertising the proposed constitutional amendment to be approximately $157,589.23.

For the proposed constitutional amendment to be placed on the ballot, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house of the Legislature.

If the joint resolution is passed by a three-fifths vote of both houses of the Legislature, it will be submitted to the voters in the general election in November of 2016.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment. If approved by the voters, the proposed constitutional amendment would be effective January 3, 2017, if approved by the voters.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 7 of Article X of the Florida Constitution prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.

The Florida Supreme Court has found that "The Constitution of Florida is a limitation of power, and, while the Legislature cannot legalize any gambling device that would in effect amount to a lottery, it has inherent power to regulate or to prohibit any and all other forms of gambling; such distinction being well defined in the law."[1] The Court went on to limit the applicability of the constitutional provision to such legalized lotteries, "the primary test of which was whether or not the vice of it infected the whole community or country, rather than individual units of it. Any gambling device reaching such proportions would amount to a violation of the Constitution."[2] Thus, the Legislature may regulate keno,[3] bingo,[4] and slot machines.[5]

Pari-mutuel wagering on horseracing and greyhound racing was authorized by statute in 1931 and on Jai Alai in 1935.[6] Such activities are regulated by chapter 550, F.S., and overseen by the Division of Pari-mutuel Wagering (DMPW) within the Department of Business and Professional Regulation.

Section 15 of Article X of the State Constitution authorizes the state to operate lotteries. The Legislature has implemented this provision through chapter 24, F.S., which establishes the Florida Lottery.

Section 23 of Article X of the State Constitution authorizes slot machines at seven pari-mutuel facilities in Miami-Dade and Broward Counties that conducted pari-mutuel wagering on live events in 2002 and 2003, subject to local approval by countywide referendum. The Legislature has implemented this provision through chapter 551, F.S. The DPMW oversees such activities.

In 2010, the Legislature authorized slot machines at pari-mutuel wagering facilities in counties that meet the definition of s. 125.011, F.S., (currently Miami-Dade County), provided that such facilities have conducted pari-mutuel wagering on live racing for two years and meet other criteria.[7] Hialeah Park is the only facility that operates slot machines under this provision.

The Legislature also provided that pari-mutuel wagering facilities in other counties could gain eligibility to conduct slot machines if located a county that has approved slot machines by a referendum which was held pursuant to a statutory or legislative grant of authority granted after July 1, 2010, provided that such facility had conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure.[8]

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[1] *Lee v. City of Miami*, 121 Fla. 93, 102 (1935).
[2] *Id.*
[3] *Overby v. State*, 18 Fla. 178, 183 (1881).
[4] *Greater Loretta Imp. Ass'n v. State ex rel. Boone*, 234 So.2d 665 (Fla. 1970).
[5] *See Lee v City of Miami*, 121 Fla. 93 (1935), and *Florida Gaming Centers v. Florida Dept. of Business and Professional Regulation*, 71 So.3d 226 (1st DCA 2011).
[6] *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.
[7] *See* Ch. 2010-29, Laws of Fla., and s. 551.102(4), F.S.
[8] See 2012-01 Fla. Op. Att'y Gen (Interpreting the slot machine eligibility provision as requiring additional statutory or constitutional authorization "to bring a referendum within the framework set out in the third clause of section 551.102(4).").

Gambling on Indian lands is regulated by federal law, which requires the State negotiate in good faith for compacts governing the operation of certain types of games, if authorized for any person in the state.[9] Florida has negotiated such a compact with the Seminole Tribe of Florida.

Proposed Changes

The joint resolution proposes creation of Section 29 of Article X of the Florida Constitution relating to voter control of gambling expansion. The joint resolution amends the Florida Constitution to require a constitutional amendment proposed by initiative petition to expand gambling in the state.

Expansion of gambling is defined in the joint resolution as the introduction of gambling at any facility or location in the state other than those facilities lawfully conducting gambling as of March 15, 2015, or expressly authorized by statute enacted during the 2015 regular session of the Legislature. It includes the introduction of additional types or categories of gambling at any such location.

The joint resolution does not limit the Legislature's authority to restrict, regulate, or tax any gambling activity by general law.

Gambling is defined consistent with federal law governing gambling on Indian lands.[10] The resolution cites the federal definition of class III gaming. Such games include:

- House banked or banking games such as baccarat, chemin de fer, blackjack (21), and pai gow;
- Casino games such as roulette, craps, and keno;
- Slot machines as defined in 15 U.S.C. s. 1171(a)(1);
- Electronic or electromechanical facsimiles of any game of chance;
- Sports betting and pari-mutuel wagering, including, but not limited to, wagering on horse racing, dog racing, or jai alai; and
- Lotteries, other than state-operated lotteries.

The resolution specifically includes the following in the definition of gambling, regardless of how those devices are defined under the federal law:

- Electronic gambling device,
- Internet sweepstakes device, and
- Video lottery terminal, other than a state-operated video lottery terminal.

The joint resolution does not limit the authority of the State of Florida to negotiate a tribal-state compact under the federal Indian Gaming Regulation Act or to enforce any existing tribal-state compact.

If the joint resolution is passed by a three-fifths vote of both houses of the Legislature, it will be submitted to the voters in the general election in November of 2016.

B. SECTION DIRECTORY:

This is a joint resolution, which is not divided by sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not appear to have an impact on state government revenues.

[9] *See* Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq.
[10] Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq.

2. Expenditures:

Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimates the full publication costs for advertising the proposed amendment to be approximately $135.97 per word, for a total publishing cost of approximately $157,589.23.[11]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have an impact on local government revenues.

2. Expenditures:

The joint resolution does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This joint resolution does not appear to have an economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This is not a general bill and is therefore not subject to the municipality/county mandates provision of article VII, section 18 of the Florida Constitution.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.[12] The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by the a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.[13]

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose. Without an effective date, the amendment becomes effective on the first Tuesday after the first Monday in the January following the election, which will be January 3, 2017.

B. RULE-MAKING AUTHORITY:

[11] Department of State, Agency Analysis 2015 Bill HJR 1239 (Mar. 12, 2015).
[12] Art. XI, s. 1 of the Florida Constitution.
[13] Art. XI, s. 5 of the Florida Constitution.

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Joint Resolution

A joint resolution proposing the creation of Section 29 of Article X of the State Constitution to require that any expansion of gambling be authorized by a constitutional amendment proposed by initiative petition and approved by Florida voters and providing construction.

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

That the following creation of Section 29 of Article X of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE X

MISCELLANEOUS

SECTION 29. Voter control of gambling expansion.—

(a) PUBLIC POLICY.—The power to authorize the expansion of gambling in this state is reserved to the people. No expansion of gambling is authorized except by a constitutional amendment proposed by initiative petition pursuant to Section 3 of Article XI and approved by the electors pursuant to Section 5 of Article XI.

(b) DEFINITIONS.—As used in this section, the term:

CODING: Words stricken are deletions; words underlined are additions.

(1) "Expansion of gambling" means the introduction of gambling at a facility or location other than a facility or location that lawfully conducts gambling as of March 15, 2015, or is expressly authorized to conduct gambling by legislation enacted during the 2015 regular session of the Legislature. The term "expansion of gambling" also includes the introduction of additional types or categories of gambling at any such facility or location.

(2) "Gambling" means any of the types of games that are within the definition of class III gaming in the federal Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq., and in 25 C.F.R. s. 502.4, as of the effective date of this amendment. The term "gambling" includes, but is not limited to, any banking game, including, but not limited to, card games such as baccarat, chemin de fer, blackjack or 21, and pai gow; casino games such as roulette, craps, and keno; slot machines as defined in 15 U.S.C. s. 1171(a)(1); electronic or electromechanical facsimiles of any game of chance; sports betting and pari-mutuel wagering, including, but not limited to, wagering on horseracing, dog racing, or jai alai exhibitions; and lotteries other than state-operated lotteries. The term "gambling" also includes the use of any electronic gambling device, Internet sweepstakes device, or video lottery terminal other than a state-operated video lottery terminal, regardless of how those devices are defined under the federal Indian Gaming Regulatory Act.

(c) LEGISLATIVE AUTHORITY RETAINED.—This section does not limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gambling activity.

(d) TRIBAL-STATE COMPACTING AUTHORITY UNAFFECTED.—This section does not limit the authority of the State of Florida to negotiate a tribal-state compact under the federal Indian Gaming Regulatory Act or to affect any existing tribal-state compact.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE X, SECTION 29

VOTER CONTROL OF GAMBLING EXPANSION IN FLORIDA.—Proposing an amendment to the State Constitution to provide that the power to authorize the expansion of gambling in Florida is reserved to the people; prohibit the expansion of gambling unless proposed and approved as a constitutional amendment by initiative petition; define "expansion of gambling" and "gambling;" and clarify that this amendment does not affect the right of the Legislature to exercise its authority through general law or the state's authority regarding tribal-state compacts.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot if a court declares the preceding statement defective and the decision of the court is not reversed:

CONSTITUTIONAL AMENDMENT

ARTICLE X, SECTION 29

VOTER CONTROL OF GAMBLING EXPANSION IN FLORIDA.—This proposed amendment to the State Constitution provides that the power to authorize the expansion of gambling in Florida is reserved to the people. The proposed amendment prohibits the expansion of gambling unless proposed and approved as a constitutional amendment by initiative petition. By providing that an initiative petition is the exclusive means of amending the State Constitution to authorize the expansion of gambling, the proposed amendment affects Article XI of the State Constitution.

For purposes of the proposed amendment, the term "gambling" means any of the types of games that are defined as class III gaming under the federal Indian Gaming Regulatory Act, including banking games, casino games, sports betting and pari-mutuel wagering, and non-state-operated lotteries. The term "gambling" also includes the use of any electronic gambling device, Internet sweepstakes device, or video lottery terminal other than a state-operated video lottery terminal, regardless of how those devices are defined under the federal Indian Gaming Regulatory Act.

For purposes of the proposed amendment, the term "expansion of gambling" means the introduction of gambling at a facility or location other than those facilities and locations: (1) lawfully conducting gambling as of March 15, 2015; or (2) expressly authorized to conduct gambling by legislation adopted during the 2015 regular session of the Legislature. The term "expansion of

gambling" also includes the introduction of additional types or categories of gambling at any such facility or location.

The proposed amendment does not affect the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gambling activity. The proposed amendment does not affect or limit the authority of the State of Florida to negotiate a tribal-state compact under the federal Indian Gaming Regulatory Act or affect any existing tribal-state compact.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot if a court declares the preceding statements defective and the decision of the court is not reversed:

CONSTITUTIONAL AMENDMENT

ARTICLE X, SECTION 29

VOTER CONTROL OF GAMBLING EXPANSION IN FLORIDA.—Proposing the following amendment to the State Constitution:

ARTICLE X

MISCELLANEOUS

SECTION 29. Voter control of gambling expansion.—

(a) PUBLIC POLICY.—The power to authorize the expansion of gambling in this state is reserved to the people. No expansion of gambling is authorized except by a constitutional amendment proposed by initiative petition pursuant to Section 3 of Article XI and approved by the electors pursuant to Section 5 of Article XI.

(b) DEFINITIONS.—As used in this section, the term:

(1) "Expansion of gambling" means the introduction of gambling at a facility or location other than a facility or location that lawfully conducts gambling as of March 15, 2015, or is expressly authorized to conduct gambling by legislation enacted during the 2015 regular session of the Legislature. The term "expansion of gambling" also includes the introduction of additional types or categories of gambling at any such facility or location.

(2) "Gambling" means any of the types of games that are within the definition of class III gaming in the federal Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq., and in 25 C.F.R. s. 502.4, as of the effective date of this amendment. The term "gambling" includes, but is not limited to, any banking game, including, but not limited to, card games such as baccarat, chemin de fer, blackjack or 21, and pai gow; casino games such as roulette, craps, and keno; slot machines as defined in 15 U.S.C. s. 1171(a)(1); electronic or electromechanical facsimiles of any game of chance; sports betting and pari-mutuel wagering, including, but not limited to, wagering on horseracing, dog racing, or jai alai exhibitions; and lotteries other than state-operated lotteries. The term "gambling" also includes the use of any electronic gambling device, Internet sweepstakes device, or video lottery terminal other than a state-operated video lottery terminal, regardless

of how those devices are defined under the federal Indian Gaming Regulatory Act.

(c) LEGISLATIVE AUTHORITY RETAINED.—This section does not limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gambling activity.

(d) TRIBAL-STATE COMPACTING AUTHORITY UNAFFECTED.—This section does not limit the authority of the State of Florida to negotiate a tribal-state compact under the federal Indian Gaming Regulatory Act or to affect any existing tribal-state compact.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1287 Public Records/Veterinary Medical Practice
SPONSOR(S): State Affairs Committee, Business & Professions Subcommittee, Renuart, Harrell and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N, As CS	Haston	Luczynski
2) State Affairs Committee	17 Y, 1 N, As CS	Williamson	Camechis
3) Regulatory Affairs Committee		Haston SH	Hamon K.W.H.

SUMMARY ANALYSIS

Animal medical records generated by licensed veterinarians are not public records; however, the records are confidential and protected from disclosure under the law regulating licensed veterinarians. Animal medical records are public records when generated by an individual practicing in conjunction with a state college of veterinary medicine located in Florida and accredited by the American Veterinary Medical Association Council on Education.

The bill creates a public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education. It provides for retroactive application of the public record exemption. In addition, the bill authorizes the release of the confidential and exempt animal medical records in certain instances.

The public records exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Law
Article 1, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Record Exemptions
The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Furthermore, the Open Government Sunset Review Act[2] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:[3]

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.

The Open Government Sunset Review Act requires automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[4]

Animal Medical Records
Animal medical records generated by licensed veterinarians are not public records; however, the records are confidential and protected from disclosure under the law regulating licensed veterinarians, except in certain limited circumstances.[5] Animal medical records are public records when generated by an individual practicing in conjunction with a state college of veterinary medicine located in Florida and accredited by the American Veterinary Medical Association Council on Education.

Effect of Proposed Changes

The bill creates a public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on

[1] Art. I, s. 24(c) of the State Constitution.
[2] *See* s. 119.15, F.S.
[3] s. 119.15(6)(b), F.S.
[4] s. 119.15(3), F.S.
[5] s. 474.2165, F.S.

Education. It provides that the following records are confidential and exempt[6] from public record requirements:

- Medical records generated that relate to diagnosing the medical condition of an animal, the medical treatment of an animal, or performing a manual procedure for the diagnosis of or treatment for the pregnancy, fertility, or infertility of an animal.
- Any such medical records that are transferred by a previous record owner.

The confidential and exempt animal medical records may be disclosed to a governmental entity in the performance of its duties and responsibilities, and pursuant to s. 474.2165, F.S.[7]

The bill provides for retroactive application of the public record exemption.[8]

The public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the State Constitution, which provides that the privacy of medical records relating to the treatment of animals is a public necessity warranting exemption from public records requirements. The public necessity statement further provides that the public records exemption allows a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education to effectively and efficiently carry out its mission to educate students in veterinary medicine, and that such mission would be significantly impaired without the exemption.

B. SECTION DIRECTORY:

Section 1. Creates s. 474.2167, F.S., to create a public records exemption for animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

Section 2. Provides a statement of public necessity.

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:

   None.

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[6] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

[7] Section 474.2165, F.S., relates to ownership and control of veterinary medical patient records, and provides instances when animal medical records must be released.

[8] The Supreme Court of Florida ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373 (Fla. 2001).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal fiscal impact on certain state colleges of veterinary medicine because staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, those state colleges could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the state college.

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:

Vote Requirement
Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education. As such, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Business & Professions Subcommittee considered a strike-all amendment and reported the bill favorably as a committee substitute. The adopted strike-all amendment made the following changes to the filed version of the bill:

- Formatted the bill as a public records exemption;
- Provided an exemption from public records requirements for animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

On April 2, 2015, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment authorized release of confidential and exempt animal medical records pursuant to s. 474.2165, F.S., and revised the public necessity statement for the exemption.

The staff analysis is drafted to reflect the committee substitute as approved by the State Affairs Committee.

A bill to be entitled

An act relating to public records; creating s. 474.2167, F.S.; providing an exemption from public records requirements for medical records related to the medical condition and treatment of an animal by an accredited state college of veterinary medicine and for records transferred by a previous records owner in connection with specified transactions; authorizing certain disclosure of such information; providing applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 474.2167, Florida Statutes, is created to read:

474.2167 Confidentiality of animal medical records.—

(1) The following records held by a state college of veterinary medicine and accredited by the American Veterinary Medical Association Council on Education are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Any medical record generated that relates to diagnosing the medical condition of an animal; prescribing, dispensing, or administering drugs, medicine, appliances,

CODING: Words stricken are deletions; words underlined are additions.

applications, or treatment of any nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof to an animal; or performing a manual procedure for the diagnosis of or treatment for the pregnancy, fertility, or infertility of an animal.

(b) Any such medical record that is transferred by a previous records owner in connection with a transaction of official business by a state college of veterinary medicine and accredited by the American Veterinary Medical Association Council on Education.

(2) Records made confidential and exempt by this section may be disclosed to a governmental entity in the performance of its duties and responsibilities and may be disclosed pursuant to s. 474.2165.

(3) The exemption from public records requirements under subsection (1) applies to animal medical records held before, on, or after the effective date of this exemption.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a medical record that relates to diagnosing the medical condition of an animal; prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief

of a wound, fracture, bodily injury, or disease of an animal; or performing a manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of an animal, which is held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that it is a public necessity that any such medical record that is transferred by a previous records owner in connection with the transaction of official business by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education and that is held by such state college be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that it is a public necessity that this exemption apply to such animal medical records held by such state college before, on, or after the effective date of this exemption. The Legislature finds that the release of such animal medical records compromises the confidentiality protections otherwise afforded to the owners of such animals treated by licensed veterinarians in this state pursuant to chapter 474, Florida Statutes. The Legislature finds that the owners of animals have the right to the privacy of the medical records of their animals. The Legislature finds that this exemption permits a state college of veterinary medicine that is accredited by the

American Veterinary Medical Association Council on Education to effectively and efficiently carry out its mission to educate students in veterinary medicine. Without the exemption, this mission would be significantly impaired. The Legislature finds that the privacy concerns that result from the release of such animal medical records outweigh any public benefit that may be derived from the disclosure of such information.

Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7109 PCB EUS 15-01 Florida Public Service Commission
SPONSOR(S): Energy & Utilities Subcommittee; La Rosa; Peters
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy & Utilities Subcommittee	12 Y, 0 N	Keating	Keating
1) Government Operations Appropriations Subcommittee	12 Y, 0 N	White	Topp
2) Regulatory Affairs Committee		Keating	Hamon

SUMMARY ANALYSIS

This bill:

- Establishes term limits of three consecutive terms for persons appointed to serve on the Public Service Commission (PSC) after July 1, 2015;
- Requires a person who lobbies the Public Service Commission Nominating Council to register as a legislative lobbyist pursuant to s. 11.045, F.S., and comply with the provisions of that section;
- Requires PSC commissioners to annually complete four hours of ethics training on s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the state;
- Expands the prohibition on ex parte communications to communications in a proceeding affecting substantial interests which a commissioner knows or reasonably expects will be filed within 180 days after the date of the communication;
- Expands the prohibition on ex parte communications to include certain communications at scheduled and noticed open public meetings of educational programs and conferences of regulatory agency associations;
- Authorizes the Governor to remove from office a commissioner found by the Commission on Ethics to have willfully and knowingly violated the law with respect to ex parte communications, and requires removal from office after a second such finding;
- Requires the PSC to provide live streaming on the Internet of each PSC meeting attended by two or more commissioners and each PSC meeting at which a decision is made concerning the rights or obligations of any person;
- Requires the PSC to make a recorded copy of each meeting, workshop, hearing, or proceeding available on its website;
- Prohibits a regulated electric utility from charging a higher rate under a tiered rate structure due to an increase in usage attributable to a billing cycle extension;
- Establishes limits on the deposit amount that a regulated electric utility may require from a customer;
- Requires a regulated electric utility to notify each customer of all available rates and to provide good faith assistance to the customer in selecting the best rate;
- Requires new and amended tariffs of regulated electric utilities to be approved by vote of the PSC, except for administrative changes; and
- Specifies that moneys received for implementation of measures to encourage demand-side renewable energy systems must be used solely for that purpose, including administrative costs of such measures.

The bill does not appear to have an impact on state government revenues. As discussed in the *Fiscal Comments* section, the bill may have an insignificant negative fiscal impact on state government expenditures. The bill does not appear to have an impact on local government revenues or expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Proceedings of the Florida Public Service Commission

The Florida Public Service Commission ("PSC" or "commission") is an arm of the legislative branch of government.[1] The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.[2] In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[3]

In performing this role, the PSC conducts proceedings ranging from workshops, customer hearings, internal affairs meetings, and rulemaking to informal "proposed agency action" proceedings and formal evidentiary hearings. The PSC conducts customer service hearings in the service territory of a rate-regulated utility to obtain customer comments in all formal evidentiary proceedings in which the PSC is considering a change in a utility's base rates.[4] If feasible, the PSC holds formal evidentiary hearings concerning water and wastewater certificates in the service area of the utility seeking a new or amended certificate.[5]

The PSC streams live on the Internet all internal affairs meetings, agenda conferences, and hearings held in Tallahassee. It also streams live on the Internet all workshops, including rule development workshops, that it believes are of great public interest. All recordings of such meetings, hearings, and workshops are available for future review on the PSC's web page.[6]

Appointment of Public Service Commissioners

The PSC is comprised of five commissioners appointed to staggered four-year terms.[7] There are no limits on the number of terms that a commissioner may serve. Although the PSC is an arm of the legislative branch of government, the Legislature has delegated to the Governor a "limited authority with respect to the Public Service Commission by authorizing him or her to participate in the selection of members" in a specific manner[8]: commissioners are appointed by the Governor from a slate of nominees selected by the Public Service Commission Nominating Council (PSC Nominating Council), and the Governor's appointments must be confirmed by the Senate.[9]

The PSC Nominating Council consists of 12 members, with six appointed by the President of the Senate and six appointed by the Speaker of the House of Representatives. The President and the

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[1] s. 350.001, F.S.

[2] http://www.psc.state.fl.us/about/overview.aspx#one

[3] *Id.* During 2014, the PSC regulated five investor-owned electric companies, eight investor-owned natural gas utilities, and 149 investor-owned water and/or wastewater utilities. While the PSC does not fully regulate publicly owned municipal or cooperative electric utilities, the Commission does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations and planning, over 34 municipally owned electric systems and 18 rural electric cooperatives. The PSC has jurisdiction, with regard to territorial boundaries and safety, over 28 municipally owned natural gas utilities and also exercises safety authority over all electric and natural gas systems operating in the state.

[4] Public Service Commission Analysis of HB 219 (2015), submitted February 17, 2015.

[5] *Id.* See s. 367.045(4), F.S.

[6] *Id.*

[7] ss. 350.01 and 350.031, F.S.

[8] s. 350.001, F.S.

[9] s. 350.031, F.S.

Speaker must each appoint three members from their own chamber, including one member from the minority party, and three nonlegislator members. Council members have four-year terms, except that legislator members serve two-year terms concurrent with the two-year elected terms of House members. Council meetings are subject to public records and public meetings law.[10]

Before nominating a person to the Governor for appointment, the PSC Nominating Council must determine that the person is competent and knowledgeable in one or more fields, including but not limited to: public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or "another field substantially related to the duties and functions of the commission." The law requires that the commission fairly represent these fields.[11]

Public Service Commissioners – Standards of Conduct

The PSC is required to perform its duties independently.[12] Part III of Chapter 112, F.S., establishes a code of ethics for public officers and employees, which includes Public Service Commissioners. Generally, this code prohibits public officers, including commissioners, from soliciting or accepting anything of value to influence a vote or official action, using their official position to secure a special benefit, disclosing or using non-public information for personal benefit, soliciting gifts from lobbyists, and soliciting an honorarium from anyone or accepting an honorarium from a lobbyist. This code also establishes restrictions on public officers, including commissioners, from doing business with one's own agency, having outside employment or contractual relationships that conflict with public duties, representing any party before one's agency for compensation for two years after leaving office, and employing relatives in the agency. Finally, this code requires that public officers, including commissioners, disclose voting conflicts when a vote would result in a special private gain or loss, file quarterly reports for gifts over $100 from persons not lobbyists or relatives, file quarterly reports for receipt of honorarium-related expenses from lobbyists, and disclose certain financial interests.

In addition to the provisions of part III of chapter 112, F.S., public service commissioners are subject to more stringent requirements in s. 350.041, F.S. In the event of a conflict between part III of chapter 112 and s. 350.041, F.S., the more restrictive provision applies.[13] Section 350.041, F.S., provides the following standards of conduct:

- A commissioner may not accept anything from a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not accept anything from a party in a proceeding currently pending before the commission.
- A commissioner may not accept any form of employment with, or engage in any business activity with, a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not have any financial interest in a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility), except for shares in a mutual fund.
- A commissioner may not serve as the representative of, or serve as an executive officer or employee of, a political party; campaign for any candidate for public office; or become a candidate for any public office without first resigning.
- A commissioner, during his or her term of office, may not make any public comment on the merits of a formal proceeding in which a person's substantial interests are determined.
- A commissioner may not conduct himself or herself in an unprofessional manner during the performance of official duties.

[10] *Id.*
[11] *Id.*
[12] s. 350.001, F.S.
[13] s. 350.041(1), F.S.

- A commissioner must avoid impropriety in all activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.

There are no statutory requirements for training related to commissioners' duties and responsibilities under these standards. However, the PSC's Office of General Counsel provides training for all new commissioners on the duties, responsibilities, and prohibitions contained in Chapters 112 and 350, F.S., as well as the public records and meeting laws, and informs commissioners of new developments in these areas.[14]

Ex Parte Communications

Commissioners are prohibited from initiating or considering ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a rulemaking proceeding, a declaratory statement proceeding, workshops, or internal affairs meetings.[15] The law also prohibits an individual from discussing ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days.[16]

If a commissioner receives a prohibited ex parte communication, he or she must: place on the record of the proceeding a copy of any written correspondence or a memo stating the substance of any oral communication; provide written notice to all parties to the proceeding; and provide all parties the opportunity to respond to the ex parte communication. The commissioner may choose to withdraw from the proceeding if he or she believes it is necessary to do so to eliminate the effect of having received the communication.[17] Any individual other than a commissioner that makes a prohibited ex parte communication must submit to the commission: a written statement describing the nature of the communication; copies of all written communications made and written responses received; and a memorandum stating the substance of all oral communications made and oral responses received. The commission must place this information on the record of the relevant proceeding.[18]

The prohibition on ex parte communications does not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies.[19]

The Commission on Ethics is empowered to investigate sworn complaints of violations of this section. If the Commission on Ethics finds that there has been a violation by a PSC commissioner, it must provide a report of its findings and recommendations to the Governor and the Florida Public Service Commission Nominating Council. The Governor is authorized to enforce the findings and recommendations. A commissioner who fails to place the communication on the record within 15 days is subject to removal and a civil penalty of up to $5,000. Any other person who participated in the communication faces a two-year ban on practice before the PSC.[20]

Regulation of Electric Utility Customer Billing Practices

Rate Information Provided to Customers

The rates and terms of service for each rate-regulated electric utility (electric utility) are reflected in rate schedules applicable to various classes of customers, as established by order of the PSC. In some

[14] Public Service Commission Analysis of HB 219, *supra* note 4.
[15] s. 350.042(1), F.S. The law does not define "ex parte communications" for purposes of this section, though it is generally understood to mean a communication between a commissioner and a party or other interested person, including an attorney or representative of that party or person, that was neither on the record nor on reasonable prior notice to all parties.
[16] *Id.*
[17] s. 350.042(4), F.S.
[18] s. 350.042(5), F.S.
[19] s. 350.042(3), F.S.
[20] s. 350.042(6) and (7), F.S.

cases, a customer may be eligible to receive service under more than one rate schedule. PSC rules require an electric utility to notify each customer of any new rate schedule that they may be eligible for within 60 days of approval of the rate schedule and to notify each customer at least once a year of all rate schedules that the customer may elect. Upon request of a customer, an electric utility is required to provide the customer information about applicable rate schedules and assist the customer in obtaining the rate schedule which is most advantageous to the customer's requirements.[21] Absent a customer request, there is no affirmative duty for an electric utility to assist a customer in identifying the most advantageous rate.

Establishment of Deposits

Under its authority to prescribe fair and reasonable rates and charges, the PSC has adopted a rule on customer deposits.[22] Under this rule, each electric utility's tariff must contain the utility's specific criteria for determining the amount of initial deposit. After a customer has had continuous service for a period of 23 months and has established a satisfactory payment record, the utility must:

- Refund a residential customer's deposit.
- At its option, either refund or pay a higher rate of interest[23] for nonresidential deposits.

An electric utility may also increase a customer's required deposit to secure payment of current bills. For new or additional deposits, the amount of the required deposit may not exceed "an amount equal to twice the average charges for actual usage of electric service for the twelve month period immediately prior to the date of notice." If a customer has had service for less than twelve months, the utility must calculate the new or additional deposit based upon the "average actual monthly usage available."[24]

Though the first part of the rule is ambiguous as to the period of usage for which charges should be averaged, the rule has consistently been interpreted and implemented to mean that the total amount of the deposit required by the utility may not exceed twice the average monthly bill for the immediately preceding twelve months.[25]

Customer Billing Cycles

PSC rules specify that "each [electric utility] service meter shall be read at monthly intervals on the approximate corresponding day of each meter-reading period."[26] Further, utilities may adjust a billing cycle, provided that "[t]he regular meter reading date may be advanced or postponed not more than five days without a pro-ration of the billing for the period."[27]

Upon approval of the PSC, electric utilities may use tiered rates in particular rate schedules. Tiered rates are typically used to encourage conservation by applying a higher rate for usage above a threshold specified in the rate schedule.
The PSC's rules do not address the application of tiered rates to extended billing periods. Recently, an electric utility adjusted its billing period for one billing cycle "as part of an ongoing process started in May 2013 to streamline the company's routes for meter-reading throughout central and northern

[21] Rule 25-6.093, F.A.C.
[22] Rule 25-6.097, F.A.C.
[23] *Id.* This higher interest rate is three percent instead of the usual two percent. In all cases the interest is simple interest, not compounded.
[24] *Id.*
[25] *See, e.g.,* PSC Order No. PSC-13-0124-PAA-EI, issued March 13, 2013, in Docket No. 120176-EI (In re: Complaint of Frederick Smallakoff against Progress Energy Florida, Inc. concerning alleged improper bills, Case No. 1059336E).
[26] Rule 25-6.099, F.A.C.
[27] Rule 25-6.100, F.A.C.

Florida."[28] As a result of the extended billing period, some customers' total usage for the extended billing period increased such that a tiered rate was applicable, even though their average daily use did not increase during that period. After many complaints, the utility agreed to refund all increased charges and absorb the remaining unbilled charges that would have resulted.[29]

Approval of Electric Utility Tariffs

The PSC-approved rate schedules for each electric utility are set forth in tariffs. In certain circumstances, the PSC authorizes its staff to administratively approve utility tariffs without a vote of the commission. These circumstances include approval of tariffs filed to correct typographical errors, approval of tariff amendments that clarify or reorganize text, approval of tariffs filed in response to PSC rules or orders, and removal of obsolete tariffs once all customers have discontinued service under the tariff.[30]

Recovery of Costs for Energy Efficiency and Conservation Programs

Pursuant to the Florida Energy Efficiency and Conservation Act (FEECA), the PSC must establish energy efficiency and conservation goals for certain electric utilities and must establish plans and programs designed to meet those goals.[31] In 2008, the Legislature added a requirement for the PSC to adopt appropriate goals for increasing the development of demand-side renewable energy systems.[32] To implement this requirement, the PSC created a five-year solar pilot project, and each year the utilities collected money for these purposes. In the most recent FEECA goal-setting hearings in 2014, electric utilities proposed ending the project early, and parties to the proceeding expressed concern about the potential disposition of the remaining funds.

In annual hearings, the PSC reviews each utility's costs for FEECA programs. Cost recovery through rates in a given calendar year is based on the net of projected expenses for that year and the positive or negative "true-up" balance from the preceding period. Under this mechanism, utilities are able to recover only the actual costs of providing the FEECA programs, including costs to administer the programs.

Effect of Proposed Changes

Proceedings of the Florida Public Service Commission

The bill establishes requirements for the PSC to provide live streaming on the Internet of specified proceedings. Specifically, the bill requires live streaming of each PSC meeting that is attended by two or more commissioners, including each internal affairs meeting, workshop, hearing, or other proceeding. The bill also requires live streaming of each PSC meeting, workshop, hearing, or other proceeding at which a decision is made which concerns the rights or obligations of any person. The bill requires that a recorded copy of each meeting, workshop, hearing, or proceeding be made available on the PSC's website.

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[28] Jim Turner, *Duke Energy called to explain billing change*, Tallahassee Democrat, August 25, 2014, http://www.tallahassee.com/story/news/politics/2014/08/25/duke-energy-called-explain-billing-change/14594563/ (last accessed March 13, 2015).

[29] Ivan Penn, *Duke charges were set to reach more than $2.6 million in overbilling*, Tampa Bay Times, September 10, 2014, http://www.tampabay.com/news/business/energy/duke-energy-refunds-17-million-to-customers-because-of-meter-issue/2197029 (last accessed March 13, 2015).

[30] Public Service Commission Analysis of HB 219, *supra* note 4 (referring to FPSC Agency Procedure Manual, Chapter 2.07).

[31] ss. 366.80-366.83 and 403.519, F.S.

[32] Chapter 2008-227, Laws of Fla. The term "demand-side renewable energy" means a system located on a customer's premises generating thermal or electric energy using Florida renewable energy resources and primarily intended to offset all or part of the customer's electricity requirements provided such system does not exceed 2 megawatts.

The PSC currently provides live streaming, and makes recordings available on its website, for most of the types of meetings addressed in the bill, but it does not do so for all workshops or for many events held outside of Tallahassee. Thus, the bill will expand public access to view these events.

Appointment of Public Service Commissioners

Noting that the purpose of the PSC Nominating Council is to select nominees for an arm of the legislative branch of government, the bill establishes a requirement that any person who lobbies the PSC Nominating Council must register as a lobbyist pursuant to s. 11.045, F.S., which governs registration and reporting requirements for legislative branch lobbying. The bill specifies the type of activity that qualifies as lobbying for purposes of registration, using essentially the same language used in s. 11.045, F.S., to define such activity. Specifically, the requirement applies to:

> a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of influencing or attempting to influence action of the council through oral or written communication or through an attempt to obtain the goodwill of a legislator or nonlegislator member of the council, or a person who is principally employed for governmental affairs by another person or governmental entity to act on behalf of that other person or entity for this purpose ....

Each person subject to registration under the bill must also comply with the other provisions of s. 11.045, F.S., which address the filing of compensation reports, prohibited expenditures to the benefit of a member, and penalties for noncompliance.

The bill also establishes term limits for PSC commissioners. Commissioners appointed after July 1, 2015, may not serve more than three consecutive terms.

Public Service Commissioners – Standards of Conduct

The bill requires that PSC commissioners must annually complete four hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the state. The bill provides that this requirement can be met by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

Ex Parte Communications

The bill expands the prohibition on ex parte communications to include any communication between a commissioner and a person legally interested in a proceeding (e.g., a party, interested person, or legal counsel for either) concerning the merits, threat, or offer of reward in a proceeding which a commissioner knows or reasonably expects will be filed within 180 days after the date of the communication. This reduces the period of time during which communications could potentially occur between interested persons and commissioners concerning the merits of matters that may come before the PSC. The bill specifies that the prohibition applies in proceedings under sections 120.569 and 120.57, F.S., i.e., proceedings in which a party's substantial interests may be affected.

The bill eliminates the exception for ex parte communications in scheduled and noticed open public meetings of educational programs and conferences of associations of regulatory agencies. The bill provides a finding that recognizes the value of having commissioners attend educational programs, conferences, and meetings of associations of regulatory agencies, but establishes requirements for attendance and participation in such meetings that are intended to avoid violations of the ex parte prohibition. While participating in these meetings, a commissioner must refrain from commenting on or discussing the subject matter of any

proceeding covered by the prohibition and must use reasonable care to ensure that the content of a meeting in which the commissioner participates is not designed to address or create a forum to influence the commissioner on the subject matter of any such proceeding.

The bill authorizes the Governor to remove from office any commissioner found by the Commission on Ethics to have willfully and knowingly violated s. 350.042, F.S., related to ex parte communications, even if the Commission on Ethics does not recommend removal. The bill requires the Governor to remove a commissioner from office upon a finding by the Commission on Ethics that the commissioner willfully and knowingly violated s. 350.042, F.S., in a second, subsequent matter.

Regulation of Electric Utility Customer Billing Practices

Rate Information Provided to Customers

In each instance where an electric utility offers more than one rate for any customer class, the bill requires the utility to notify each customer in that class of the available rates and explain how each rate is charged. The bill requires each electric utility, when contacted by a customer seeking assistance in selecting the most advantageous rate, to provide good faith assistance to the customer.

Establishment of Deposits

The bill establishes clear provisions for the calculation of deposits that an electric utility may require as a condition of service. The bill provides that a utility may not charge or receive a deposit in excess of the following amounts:

- For an existing account, the total deposit may not exceed the total charges for two months of average actual usage, calculated by adding the monthly charges from the 12-month period immediately before the date any change in the deposit amount is sought, dividing this total by 12, and multiplying the result by two. If the account has less than 12 months of actual usage, the deposit must be calculated by adding the available monthly charges, dividing this total by the number of months available, and multiplying the result by two.
- For a new customer, the amount may not exceed two months of projected charges, calculated by adding the projected 12 months of charges, dividing this total by 12, and multiplying the result by two. Once a new customer has had continuous service for a 12-month period, the amount of the deposit must be recalculated, using actual usage data. Any difference between the projected and actual amounts must be resolved by the customer paying any additional amount that may be billed by the utility or the utility returning any overcharge.

Customer Billing Cycles

In situations where the PSC has approved tiered rates for an electric utility and has authorized the utility to adjust its regular billing period, the bill prohibits a utility from charging the customer higher rates because of an increase in usage attributable to the extended billing period. The bill maintains the current practice of allowing meter reading dates to be advanced or postponed up to five days, for routine operating reasons, without a requirement that billing be pro-rated for that period.

Approval of Electric Utility Tariffs

The bill provides that the new and amended electric utility tariffs must be approved by vote of the PSC. The bill provides an exception for administrative changes that do not substantially change the meaning or operation of a tariff.

Recovery of Costs for Energy Efficiency and Conservation Programs

The bill provides that moneys received by a rate-regulated electric utility to implement measures to encourage development of demand-side renewable energy systems may only be used for that purposes, including related administrative costs. This provision is consistent with current PSC practice.

B. SECTION DIRECTORY:

Section 1. Amends s. 350.01, F.S., relating to terms of Public Service Commissioners and Public Service Commission proceedings.

Section 2. Amends s. 350.031, F.S., relating to the Florida Public Service Commission Nominating Council.

Section 3. Amends s. 350.041, F.S., relating to standards of conduct for Public Service Commissioners.

Section 4. Amends s. 350.042, F.S., relating to ex parte communications.

Section 5. Amends s. 366.05, F.S., relating to powers of the Public Service Commission.

Section 6. Amends s. 366.82, F.S., relating to energy efficiency and conservation goals, plans, programs, annual reports, and energy audits.

Section 7. Providing an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See *Fiscal Notes.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Customers of rate-regulated electric utilities will be protected from the imposition of higher, tiered rates in certain situations resulting from the extension of a utility's billing cycle. Customers will be protected from the imposition of excessive deposits and will receive rate schedule information that will allow cost comparisons.

Persons who lobby the PSC Nominating Council may incur costs to register as a lobbyist, if not otherwise registered.

D. FISCAL COMMENTS:

According to the PSC's analysis of similar provisions in HB 219, the bill may increase operating costs for the PSC to live-stream meetings in locations that lack adequate in-house technology and, if the agency's current in-house ethics training will not satisfy the training requirements in the bill, the bill may increase costs to obtain outside ethics training for commissioners. The PSC has estimated $30,555 in expenditures the first year and $16,760 in recurring expenditures to implement the provisions of the bill.[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 government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[33] March 25, 2015 e-mail on file with the House Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to the Florida Public Service Commission; amending s. 350.01, F.S.; providing term limits for commissioners appointed after a specified date; requiring that specified meetings, workshops, hearings, or proceedings of the commission be streamed live and recorded copies be made available on the commission's website; amending s. 350.031, F.S.; requiring a person who lobbies a member of the Florida Public Service Commission Nominating Council to register as a lobbyist; amending s. 350.041, F.S.; requiring public service commissioners to annually complete ethics training; amending s. 350.042, F.S.; revising the prohibition against ex parte communications to include any matter that a commissioner knows or reasonably expects will be filed within a certain timeframe; providing legislative intent; defining terms; applying the prohibition against ex parte communications to specified meetings; specifying conditions under which the Governor must remove from office any commissioner found to have willfully and knowingly violated the ex parte communications law; amending s. 366.05, F.S.; limiting the use of tiered rates in conjunction with extended billing periods; limiting deposit amounts; requiring a utility to notify each customer if it has more than

one rate for any customer class; requiring the utility to provide good faith assistance to the customer in determining the best rate; assigning responsibility to the customer for the rate selection; requiring the commission to approve new tariffs and certain changes to existing tariffs; amending s. 366.82, F.S.; requiring that money received by a utility for the development of demand-side renewable energy systems be used solely for that purpose; providing an effective date.

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

Section 1. Subsection (3) of section 350.01, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

350.01 Florida Public Service Commission; terms of commissioners; vacancies; election and duties of chair; quorum; proceedings.—

(3) Any person serving on the commission who seeks to be appointed or reappointed shall file with the nominating council no later than June 1 prior to the year in which his or her term expires a statement that he or she desires to serve an additional term. A commissioner appointed after July 1, 2015, may not serve more than three consecutive terms.

(8) Each meeting, including each internal affairs meeting,

workshop, hearing, or other proceeding attended by two or more commissioners, and each such meeting, workshop, hearing, or other proceeding where a decision that concerns the rights or obligations of any person is made, shall be streamed live on the Internet and a recorded copy of the meeting, workshop, hearing, or proceeding shall be made available on the commission's website.

Section 2. Subsection (10) is added to section 350.031, Florida Statutes, to read:

350.031 Florida Public Service Commission Nominating Council.—

(10) In keeping with the purpose of the council, which is to select nominees to be appointed to an arm of the legislative branch of government, a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of influencing or attempting to influence action of the council through oral or written communication or through an attempt to obtain the goodwill of a legislator or nonlegislator member of the council, or a person who is principally employed for governmental affairs by another person or governmental entity to act on behalf of that other person or entity for this purpose, must register as a lobbyist pursuant to s. 11.045 and otherwise comply with the requirements of that section.

Section 3. Subsection (3) of section 350.041, Florida Statutes is renumbered as subsection(4), and a new subsection (3) is added to that section to read:

350.041 Commissioners; standards of conduct.—

(3) ETHICS TRAINING.—Beginning January 1, 2016, a commissioner must annually complete at least 4 hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

Section 4. Subsections (1) and (3) and paragraph (b) of subsection (7) of section 350.042, Florida Statutes, are amended to read:

350.042 Ex parte communications.—

(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding under s. 120.569 or s. 120.57 that is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the date of any such communication, other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. An ~~No~~ individual may not ~~shall~~ discuss ex parte with a commissioner the merits of any issue that he or she

knows will be filed with the commission within 180 ~~90~~ days. ~~The provisions of~~ This subsection does ~~shall~~ not apply to commission staff.

(3)(a) The Legislature finds that it is important to have commissioners who are educated and informed on regulatory policies and developments in science, technology, business management, finance, law, and public policy which are associated with the industries that the commissioners regulate. The Legislature also finds that it is in the public interest for commissioners to become educated and informed on these matters through active participation in meetings that are scheduled by organizations that sponsor such educational or informational sessions, programs, conferences, and similar events and that are duly noticed and open to the public.

(b) As used in this subsection, the term "active participation" or "participating in" includes, but is not limited to, attending or speaking at educational sessions, participating in organization governance by attending meetings, serving on committees or in leadership positions, participating in panel discussions, and attending meals and receptions associated with such events that are open to all attendees.

(c) The prohibition in subsection (1) remains in effect at all times at such meetings wherever located. While participating in such meetings, a commissioner shall:

1. Refrain from commenting on or discussing the subject matter of any proceeding under s. 120.569 or s. 120.57 that is

currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the meeting.

2. Use reasonable care to ensure that the content of the educational session or other session in which the commissioner participates is not designed to address or create a forum to influence the commissioner on the subject matter of any proceeding under s. 120.569 or s. 120.57 that is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the meeting ~~This section shall not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies~~.

(7)

(b) If the Commission on Ethics finds that there has been a violation of this section by a public service commissioner, it shall provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112 and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this section. The Governor shall remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated

this section after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated this section in a separate matter.

Section 5. Subsection (1) of section 366.05, Florida Statutes, is amended to read:

366.05 Powers.—

(1)(a) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, including the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, replacements, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(b) If the commission authorizes a public utility to charge tiered rates based upon levels of usage and to vary its regular billing period, the utility may not charge a customer a

higher rate because of an increase in usage attributable to an extension of the billing period; however, the regular meter reading date may not be advanced or postponed more than 5 days for routine operating reasons without prorating the billing for the period.

(c) A utility may not charge or receive a deposit in excess of the following amounts:

1. For an existing account, the total deposit may not exceed the total charges for 2 months of average actual usage, calculated by adding the monthly charges from the 12-month period immediately before the date any change in the deposit amount is sought, dividing this total by 12, and multiplying the result by 2. If the account has less than 12 months of actual usage, the deposit shall be calculated by adding the available monthly charges, dividing this total by the number of months available, and multiplying the result by 2.

2. For a new service request, the total deposit may not exceed 2 months of projected charges, calculated by adding the 12 months of projected charges, dividing this total by 12, and multiplying the result by 2. Once a new customer has had continuous service for a 12-month period, the amount of the deposit shall be recalculated using actual usage data. Any difference between the projected and actual amounts must be resolved by the customer paying any additional amount that may be billed by the utility or the utility returning any overcharge.

(d) If a utility has more than one rate for any customer class, it must notify each customer in that class of the available rates and explain how the rate is charged to the customer. If a customer contacts the utility seeking assistance in selecting the most advantageous rate, the utility must provide good faith assistance to the customer. The customer is responsible for charges for service provided under the selected rate.

(e) New tariffs and changes to an existing tariff, other than an administrative change that does not substantially change the meaning or operation of the tariff, must be approved by majority vote of the commission.

Section 6. Subsection (2) of section 366.82, Florida Statutes, is amended to read:

366.82 Definition; goals; plans; programs; annual reports; energy audits.—

(2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, to reduce the growth rates of weather-sensitive peak demand, and to encourage development of demand-side renewable energy resources. The commission may allow efficiency investments across generation, transmission, and distribution as well as

efficiencies within the user base. Moneys received by a utility to implement measures to encourage the development of demand-side renewable energy systems shall be used solely for such purposes and related administrative costs.

Section 7. This act shall take effect July 1, 2015.

PCS for HB 301

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

[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.

PCS for HB 1233

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1233 Gaming
SPONSOR(S): Regulatory Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Affairs Committee		Anstead	Hamon

SUMMARY ANALYSIS

The bill makes changes to the pari-mutuel wagering chapter, ch. 550, F.S., the slot machines chapter, ch. 551, F.S., and the gambling chapter, ch. 849, F.S., related to operating requirements for pari-mutuel wagering permitholders and specifically removes the current requirement for greyhound racing permitholders to conduct live greyhound races in order to conduct pari-mutuel wagering activities, cardrooms and slots.

Those changes include:

- Permitting greyhound permitholders to conduct pari-mutuel wagering, cardrooms and slots without the requirement of live races;
- Providing for the revocation of dormant permits based on a permitholders failure to conduct live races, obtain an operating license, or failing to pay taxes on handle for a period of more than two years;
- Prohibiting the issuance of new or additional permits, and prohibiting the conversion or relocation of permits;
- Prohibiting the transfer of a pari-mutuel permit or license, if done for the purpose of relocation;
- Limiting the number of pari-mutuel wagering operating licenses to no more than 40;
- Repealing s. 550.0555, F.S., which allowed relocation of greyhound racing permits;
- Prohibiting the issuance of additional summer jai alai permits;
- Removing tax credits for greyhound permitholders and revising the tax on handle for live greyhound racing and intertrack wagering from 5.5% to 1.28%;
- Removing provisions that allow for reissuance of permits after they escheat to the state;
- Revising purse requirements of a greyhound permitholder that conducts live racing;
- Repealing s. 550.1647, F.S., relating to tax credits for unclaimed greyhound racing wagers;
- Revising the requirements for a greyhound permitholder to provide a greyhound adoption booth at its facility and requiring sterilization of greyhounds before adoption;
- Creating s. 550.2416, F.S., requiring injuries to racing greyhounds be reported to the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation;
- Requiring greyhound permitholders to offer certain simulcast signals if offering intertrack wagering;
- Revising the number of days from 15 to 8 that a limited thoroughbred horse sales permitholder is required to offer sales in order to obtain a limited intertrack wagering license;
- Requiring certain greyhound permitholders to locate their slot machine gaming area in certain locations and extending the weekday hours of operation for all slot machine licensees from 18 to 24 hours;
- Streamlining the slot machines chapter and limiting the issuance of slot machine licenses; and
- Revising the weekday hours that a cardroom may operate from 18 to 24 hours, specifying that a greyhound permitholder is not required to conduct a minimum number of live races in order to maintain a cardroom license, and requiring a greyhound permitholder to conduct intertrack wagering on greyhound signals to operate a cardroom.

The bill is expected to have a fiscal impact on state funds; however a fiscal analysis is unavailable at this time.

The bill provides for an effective date upon coming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Overview of Gaming in Florida

Gambling is generally prohibited in Florida, unless specifically authorized. Section 7, Art. X, of the Florida Constitution prohibits lotteries, other than pari-mutuel pools, from being conducted in Florida. Chapter 849, F.S., includes prohibitions against slot machines, keeping a gambling house and running a lottery.

Pari-mutuel wagering

Chapter 550, F.S., regulates the conduct of pari-mutuel wagering on horseracing, greyhound racing and jai alai and licensed pari-mutuel facilities. Section 849.086, F.S., authorizes cardrooms at such facilities and ch. 551, F.S., authorizes slot machines at such facilities, provided additional eligibility criteria are met. Such gaming is overseen by the Division of Pari-mutuel Wagering (DPMW) within the Department of Business and Professional Regulation (DBPR). Its purpose is to ensure the health, safety, and welfare of the public, racing animals, and licensees through efficient, and fair regulation of the pari-mutuel industry in Florida.[1]

The DPMW collects revenue in the form of taxes and fees from permitholders for the conduct of gaming activities outlined above. Additionally, the DPMW is the State Compliance Agency for oversight of the gaming compact with the Seminole Tribe. As part of the DPMW's oversight duties, it collects and verifies payments by the Seminole Tribe made to the State of Florida under the terms outlined in the Compact.

The DPMW currently makes an annual report to the Governor showing its actions, money received under Chapter 550, F. S., the practical effects of Chapter 550, and any suggestions for more effective accomplishment of the goals of the chapter.[2]

Miscellaneous Gaming

Chapter 849, F.S., contains other specific exceptions to the general gambling prohibition and authorizes certain gambling activities, such as cardrooms at pari-mutuel facilities, bingo, penny-ante poker, arcade amusement games, amusement games and machines, and game promotions. Such gaming is primarily enforced by local law enforcement, although the Department of Agriculture and Consumer Services (DOACS) and the Department of Legal Affairs (DLA) has limited authority.

Indian Gaming

Gambling on Indian lands is subject to federal law, with limited state involvement. Florida entered a compact governing such gambling with the Seminole Tribe of Florida in 2010 (Seminole Gaming Compact). Such gaming compacts are regulated by the federal Indian Gaming Regulatory Act, s, 25 U.S.C. 2701, et seq., and part II, ch. 285, F.S. The DPMW, as the State Compliance Agency under the Seminole Gaming Compact, has an oversight role in ensuring gaming at the Tribe's facilities is conducted in compliance with the compact.

The Seminole Gaming Compact permits the Tribe to offer slot machines, raffles and drawings, and any other game authorized for any person for any purpose, at all seven of its tribal casinos. It also permits

[1] From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within DBPR, and, in 1993, the Department of Business Regulation became the DBPR.
[2] s. 550.0251(1), F.S.

the Tribe to conduct banked card games, including blackjack, chemin de fer, and baccarat, but the play of the banked card games is not allowed at the Brighton or Big Cypress facilities. If banked games are authorized for any other person for any other purpose, except for a compact with a qualifying Indian Tribe, the Tribe would be authorized to offer banked cards at all seven of its facilities.

The Seminole Gaming Compact has a term of 20 years, with the exception of the authorization for banked card games which lasts five years (until July 31, 2015), unless renewed by an affirmative act of the Legislature.

In exchange for the Tribe's exclusive right to conduct slot machine gaming outside of Miami-Dade and Broward counties and the exclusive right to offer banked card games at the specified facilities, the compact provides for revenue sharing payments by the Tribe to the state as follows:

- During the initial period (first 24 months), the Tribe is required to pay $12.5 million per month ($150 million per year).
- After the initial period, the Tribe's guaranteed minimum revenue sharing payment is $233 million for year three, $233 million for year four, and $234 million for year five.
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win that ranges from 12 percent of net win up to $2 billion, to 25 percent of the amount of any net win greater than $4.5 billion.
- After the first five years, the Tribe will continue to make payments to the state based on the percentage of net win without a guaranteed minimum payment.

If the Legislature does not extend the authorization for banked card games after the first five years, the net win calculations would exclude the net win from the Tribe's facilities in Broward County.

Revenues are deposited in the General Revenue Fund.

The compact provides consequences for the expansion of gaming in Miami-Dade and Broward counties:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuel facilities located in Miami-Dade and Broward counties (which may not relocate) and the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.
- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.[3]

Revenue sharing payments cease if:

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location outside of Miami-Dade and Broward counties that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

Current Situation of Pari-Mutuel Wagering

'Pari-mutuel wagering' refers to a method of wagering in which winners divide the total amount bet in proportion to the sums they have wagered individually and with regard to the odds assigned to

[3] The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

particular outcomes.[4] In Florida, pari-mutuel wagering is authorized on jai alai, greyhound racing and various forms of horseracing and overseen by the DPMW. Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

Pari-mutuel wagering activities are limited to operators who have received a permit from the DPMW, which is then subject to ratification by county referendum. Permitholders apply for licenses annually to conduct pari-mutuel wagering activities,[5] cardrooms,[6] and slot machines.[7]

Horse racing was authorized in the State of Florida in 1931. The state authorizes three forms of horse racing classes for betting: thoroughbred, harness, and quarter horse racing. Thoroughbred racing involves only horses specially bred and registered by certain bloodlines. The thoroughbred industry is highly regulated and specifically overseen by national and international governing bodies. Harness racing uses standard bred horses, which are a "pacing or trotting horse...that has been registered as a standardbred by the United States Trotting Association" or by a foreign registry whose stud book is recognized by the USTA.[8] Quarter horse racing involves horses developed in the western United States which are capable of high speed for a short distance.[9] They are registered with the American Quarter Horse Association.

The DPMW approves pari-mutuel wagering permits. Generally, as long as the applicant meets statutory minimum requirements, the DPMW issues the permit. There is no application fee. While the DPMW is authorized to charge applicants for its investigation, it has not done so in recent years. It determines eligibility using existing resources.

The DPMW has issued 50 pari-mutuel wagering permits, and 5 non-wagering permits. There are 35 pari-mutuel permitholders currently operating at 29 facilities throughout Florida.[10] Currently, 24 pari-mutuel facilities are operating cardrooms. There are seven pari-mutuel facilities that have been licensed to operate slot machines. Several locations have multiple permits that operate at a single facility. The breakdown by permit type is as follows:

- 19 Greyhound permits
- 5 Thoroughbred permits
- 1 Harness permit
- 5 Quarter Horse permits
- 8 Jai-Alai permits
- 1 track offering limited intertrack wagering and horse sales

Permit revocation

Under certain circumstances in statute, a permitholder may lose his or her permit to conduct pari-mutuel wagering. If a permitholder has failed to complete construction of at least 50 percent of the facilities necessary to conduct pari-mutuel wagering within 12 months after approval by the voters of the permit, the DPMW shall revoke the permit after giving adequate notice to the permitholder.[11] The DPMW may grant one extension of 12 months upon a showing of good cause by the permitholder.

If a permitholder fails to pay tax on handle for live thoroughbred horse performances for a full schedule of live races for two consecutive years, his or her permit is void and escheats back to the state, unless

[4] s. 550.002(22), F.S.
[5] s. 550.0115, F.S.
[6] s. 849.086, F.S.
[7] s. 551.104, F.S.
[8] s. 550.002(33), F.S.
[9] s. 550.002(28), F.S.
[10] Florida Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering, *83rd Annual Report Fiscal Year 2013-2014,* http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2013-2014--83rd--20150114.pdf
[11] s. 550.054(10), F.S.

the failure of payment was due to events beyond the control of the permitholder.[12] Financial hardship to the permitholder does not, in and of itself, constitute just cause for the failure to pay taxes in this section. There is a similar requirement for harness racing permitholders in s. 550.9512(3)(a), F.S. In the case of failure to pay taxes, the permit escheats to the state and may be reissued.

Relocation

Certain permitholders may relocate the location listed in their permit to a new location within 30 miles. Greyhound and jai alai permitholders operating in counties where they are the only permitholder of that class may relocate under s. 550.0555, F.S. Greyhound permitholders that converted their permit from a jai alai permit under s. 550.054, F.S., may relocate under that statute. A greyhound permitholder in a county where it is the only permitholder who operates at a leased facility may also relocate under s. 550.054, F.S.

In each of these cases, the relocation must not cross county boundaries and must be approved under the local zoning regulations. In relocation under s. 550.054, F.S., the DPMW is required to grant the application for relocation once the permitholder fulfills the requirements of the statute. Approval by the DPMW is required for relocations under s. 550.0555, F.S.

Conversion

Certain permitholders may convert their permits, for instance, a permit for pari-mutuel wagering on jai alai may be converted to greyhound racing if the permitholder meets certain criteria.[13] In the past, quarter horse permits have been converted to limited thoroughbred permits,[14] jai alai to greyhound racing,[15] etc.

Permitholders may also convert to conduct summer jai alai, in certain circumstances.[16] This provision, enacted in 1980, has been subject to competing interpretations. The bill enacting the provision included in a whereas clause a finding that "it would be to the best interests of the state to permit summer jai alai *so long as there is no increase in the number of permittees authorized to operate* within any specified county." The DPMW issued one summer jai alai permit in Miami-Dade County in 2011 and has received numerous applications for Miami-Dade and Broward counties. The provision provides:

> If a permitholder that is eligible under this section to convert a permit chooses not to convert, a new permit is made available in that permitholder's county to conduct summer jai alai games as provided by this section, notwithstanding mileage and permit ratification requirements. If a permitholder converts a quarter horse racing permit pursuant to this section, this section does not prohibit the permitholder from obtaining another quarter horse racing permit.

If the provision is interpreted to provide for the issuance of a new permit, it could be used to issue new permits as often as every two years.

Intertrack wagering

Wagering on races hosted at remote tracks is called intertrack (when both tracks are in Florida) or simulcast (when one track is out of state) wagering. In-state 'host tracks' conduct live or receive broadcasts of simulcast races that are then broadcast to 'guest tracks,' which accept wagers on behalf

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[12] s. 550.09515(3)(a), F.S.
[13] s. 550.054(14), F.S., ruled an unconstitutional act by *Debary Real Estate Holdings, LLC v. State, Dept. of Business and Professional Regulation, Div. of Pari-Mutuel Wagering*, 112 So.3d 157, 168 (Fla. 1st DCA 2013).
[14] *See* s. 550.3345, F.S.
[15] ch. 89-219, Laws of Fla.
[16] s. 550.0745, F.S.

of the host. To conduct intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing and meet other requirements.[17]

A limited amount of intertrack wagering is also authorized by statute for one permanent thoroughbred sales facility.[18] In order to qualify for a license, the facility must have at least 15 days of thoroughbred horse sales at a permanent sales facility in this state for at least three consecutive years. Additionally, the facility must have conducted at least 1 day of nonwagering thoroughbred racing in this state, with a purse structure of at least $250,000 per year for 2 consecutive years before application for a license.

A limited intertrack wagering licensee is limited to conducting intertrack wagering during:

- The 21 days in connection with thoroughbred sales;
- Between November 1 and May 8;
- Between May 9 and October 31, if:
    - No permitholder within the county is conducting live events.
    - Permitholders operating live events within the county consent.
    - For the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet.

The licensee is further limited to intertrack wagering on thoroughbred racing, unless all permitholders in the same county consent. The licensee must pay 2.5 percent of total wagers on jai alai or greyhound racing to thoroughbred permitholders operating live races for purses.

Cardrooms

Cardrooms were authorized at pari-mutuel facilities in 1996.[19] Cardrooms can only be offered at a location where the permitholder is authorized to conduct pari-mutuel activities. To be eligible for a cardroom license, permitholders must conduct at least 90% of the performances conducted the year they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.

The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. No-limit poker games are permitted. Such games are played in a non-banking matter, i.e., the house has no stake in the outcome of the game. Cardrooms must be approved by an ordinance of the county commission where the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation's monthly gross receipts.

Effect of Proposed Changes to Pari-Mutuel Wagering

The Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation

The bill amends s. 550.0251, F.S., providing that the DPMW shall make an annual report to the President of the Senate, and the Speaker of the House of Representatives, in addition to current law that requires an annual report to the Governor. The report shall include, at a minimum:

- Recent events in the gaming industry, including pending litigation, pending facility license applications, and new and pending rules.
- Actions of DBPR relative to the implementation and administration of ch. 550, F.S.

[17] *See* s. 550.615, F.S.
[18] s. 550.6308, F.S.
[19] s. 20, Ch. 96-364, Laws of Fla.

- The state revenues and expenses associated with each form of authorized gaming. Revenues and expenses associated with pari-mutuel wagering shall be further delineated by the class of license.
- The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot licensee.
- A summary of disciplinary actions taken by DBPR.
- Any suggestions to more effectively achieve the purposes of ch. 550, F.S.

Permit applications

The bill provides that, effective upon becoming law, the DPMW may not approve or issue any new permit authorizing pari-mutuel wagering. The bill also limits the number of pari-mutuel wagering operating licenses that may be issued by the DPMW to permitholders to no more than 40.

Permit revocation

The bill provides additional basis for the division to revoke a permit:

- If a permitholder has failed to obtain an operating license to conduct live events for a period of more than 24 consecutive months.
- If a permitholder has failed to conduct live performances within the 24 months prior to the effective date of the bill.
- If a permitholder fails to pay taxes on handle for more than 24 consecutive months. This extends the existing requirement relative to thoroughbred and harness racing permits to all pari-mutuel wagering permits.

The bill specifies that permits revoked under these situations are void and may not be reissued.

The bill provides that approval may be obtained upon a request to place a permit in inactive status for up to 24 months. While in inactive status, the permitholder is ineligible for licensure for pari-mutuel wagering, cardrooms or slot machines.

Relocation

The bill repeals all relocation provisions.

Conversion

The bill repeals all conversion provisions.

Intertrack wagering

The bill reduces requirements for a limited intertrack wagering license:

- The number of days for public sales of thoroughbred horses is reduced from 15 to 8.
- The requirement to conduct at least one day of nonwagering racing is removed.
- Some restrictions on the conduct of intertrack wagering are removed.
- The requirement to obtain consent of other county permitholders to accept intertrack wagers on non-thoroughbred events is removed.

Greyhound racing

The bill removes the live racing requirement for greyhound racing permitholders and makes changes throughout ch. 550, F.S., related to a greyhound permitholders ability to operate pari-mutuel wagering,

cardrooms, and slots without live racing. The greyhound permitholders are given the option to continue to conduct live performances or conduct no live performance.

The bill includes the following changes:

- Removes all tax credits for greyhound permitholders and revises the tax on handle for live greyhound racing and intertrack wagering from 5.5% to 1.28%;
- Repeals s. 550.0555, F.S., which allowed the relocation of greyhound racing permits;
- Repeals s. 550.1647, F.S., relating to tax credits for unclaimed tickets at greyhound facilities;
- Revises the requirements for a greyhound permitholder to provide a greyhound adoption booth at its facility, defines the term "bona fide organization that promotes or encourages the adoption of greyhounds," and requires sterilization of greyhounds before adoption;
- Creates s. 550.2416, F.S., requiring injuries to racing greyhounds be reported on a form adopted by the DPMW within a certain timeframe and specifying information that must be included in the form. It requires the DPMW to maintain the forms as public records for a specified time and specifies disciplinary action that may be taken against a licensee of DBPR who fails to report an injury or who makes false statements on an injury form.
- Requires greyhound permitholders to offer certain simulcast signals if offering intertrack wagering.
- Requires certain greyhound permitholders to locate their slot machine gaming area in certain locations and extends the hours of operation for all slot machine licensees from 18 to 24 hours 7 days a week.
- Provides that a greyhound permitholder is not required to conduct a minimum number of live racing in order to receive, maintain, or renew a cardroom license and extends the hours of operation for all cardrooms from 18 to 24 hours 7 days a week.
- Requires a greyhound permitholder to conduct intertrack wagering on greyhound signals to operate a cardroom.

Current Situation on the Operation of Slot Machines in Florida

Racinos, pari-mutuel facilities that operate slot machine gaming, are governed by ch. 551, F.S. Eligible facilities are defined to include:

1. Any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county;
2. Any licensed pari-mutuel facility located within a county as defined in s. 125.011, F.S., provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or
3. Any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required licensed fee, and meets the other requirements of this chapter.

Seven pari-mutuel facilities obtained eligibility through constitutional approval - the first clause. An additional pari-mutuel facility, Hialeah Park, was ineligible as it had not operated live racing or games during 2002 and 2003. It obtained eligibility through the second clause.

No facilities have obtained eligibility through the third clause; however, it has been subject to competing interpretations. Stakeholders and counties have argued that the phrase "after the effective date of this section" applies to "a countywide referendum held" - so any county could authorize slot machines

relying on their general authority to hold referenda. Based on this interpretation, Brevard, Gadsden, Lee, Palm Beach, Hamilton and Washington counties, have approved slot machines at pari-mutuel facilities by referendum.

Were such gaming to occur outside of Miami-Dade or Broward counties, all revenue sharing under the Seminole Gaming Compact would end. The Seminole Gaming Compact was ratified in the same law that effectuated the third clause.

The Attorney General rejected this interpretation, arguing that the phrase "after the effective date of this section" modified the phrase "a statutory or constitutional authorization"[20] - so, counties could not rely on their general authority to hold referenda, instead needing a specific authorization to hold a referendum on the question of slot machines. The DPMW announced that it would follow this guidance.[21]

Slot machine licensees are required to pay a license fee of $2 million per fiscal year. In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent. If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee must pay to the state, within 45 days after the end of the state fiscal year, a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year that resulted in the revenue shortfall.

To continue to offer slot machines, permitholders must conduct a full schedule of live racing.[22] Additionally, thoroughbred permitholders must file an agreement between the track and the Florida Horsemen's Benevolent and Protective Association governing payment of purses on live thoroughbred races at the licensee's facility with the DPMW, as well as an agreement with the Florida Thoroughbred Breeders' Association on the payment of breeders', stallion, and special racing awards on those races.[23] Similarly, quarter horse permitholders must file an agreement with the DPMW between the track and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the licensee's facility governing the payment of purses on live quarter horse races at the licensee's facility.[24]

Effect of Proposed Changes to the Operation of Slot Machines

The bill moves the requirements for obtaining a license to conduct slot machines into the licensing provision and out of the definition and authorization provisions.

The bill continues to require that a slot machine license can only be issued as provided for in current law but removes the provision that caused litigation, discussed above, under which no license has been issued by the state. In order for a pari-mutuel permitholder to obtain slot machine licensure, the application must be:

- A licensed pari-mutuel facility where live racing or games were conducted during calendar years 2002 and 2003, located in Miami-Dade County or Broward County, and authorized for slot machine licensure pursuant to s. 23, Art. X of the State Constitution; or

[20] 2012-01 Fla. Op. Att'y Gen. (2012).
[21] Mary Ellen Klas, *Attorney General Opinion Puts Reins on Slots at Gretna Barrel Racing Track*, Miami Herald (Jan. 12, 2012), http://www.miamiherald.typepad.com/nakedpolitics/2012/01/attorney-general-opinion-puts-reins-on-gretna-barrel-racing-.html.
[22] s. 551.104(1)(c), F.S.
[23] s. 551.104(10)(a)1, F.S.
[24] s. 551.104(10)(a)2, F.S.

- A licensed pari-mutuel facility where a full schedule of live horseracing has been conducted for 2 consecutive calendar years immediately preceding its application for a slot machine license and located within a county as defined in s. 125.011, F.S.

The bill also provides the additional requirement that the issuance of the license must not trigger a reduction in revenue-sharing payments under the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.

B. SECTION DIRECTORY:

Section 1: amends s. 550.002, F.S., exempting a greyhound racing permitholder from a minimum number of required live performances;

Section 2: amends s. 550.01215, F.S., revising provisions for applications for pari-mutuel operating licenses; authorizing a greyhound racing permitholder to receive an operating license at a leased facility; and removing a provision for conversion of certain permits to jai alai permits;

Section 3: amends s. 550.0251, F.S., providing for an annual report by DBPR to the Speaker of the House and the President of the Senate;

Section 4: amends s. 550.054, F.S., providing for revocation of a pari-mutuel permit under certain circumstances; prohibiting the transfer of a pari-mutuel permit or license; removing the provision for conversion of a permit from jai alai to greyhound; and prohibiting relocation;

Section 5: repeals s. 550.0555, F.S., relating to relocation of greyhound racing permits;

Section 6: amends s. 550.0745, F.S., repealing provisions for summer jai alai permits;

Section 7: amends s. 550.0951, F.S., removing tax credits for greyhound permitholders; revising the tax on handle for live greyhound racing and intertrack wagering;

Section 8: amends s. 550.09512, F.S., removing provisions relating to reissuance of escheated thoroughbred racing permits;

Section 9: amends s. 550.09514, F.S., removing tax credits for greyhound permitholders; revising purse requirements of a greyhound permitholder that conducts live racing;

Section 10: amends s. 550.09515, F.S., removing provisions relating to reissuance of escheated thoroughbred racing permits;

Section 11: amends s. 550.1625, F.S., removing the requirement that a greyhound permitholder pay the breaks tax;

Section 12: repeals s. 550.1647, F.S., relating to tax credits for unclaimed tickets and breaks for greyhound permitholders;

Section 13: amends s. 550.1648, F.S., revising requirements for a greyhound permitholder to provide a greyhound adoption booth at its facility; and requiring sterilization of greyhounds before adoption;

Section 14: creates s. 550.2416, F.S., requiring injuries to racing greyhounds to be reported; requiring the DPMW to maintain the forms as public records; and specifying disciplinary action; and requiring the DPMW to adopt rules;

Section 15: amends s. 550.26165, F.S., conforming provisions to changes made by the act;

Section 16: amends s. 550.3345, F.S., removing a provision that allowed conversion and relocation of a quarter horse permit;

Section 17: amends s. 550.3551, F.S., removing a provision that limits the number of out-of-state races on which wagers are accepted by a greyhound permitholder;

Section 18: amends s. 550.615, F.S., revising provisions relating to intertrack wagering on greyhound racing;

Section 19: amends s. 550.6305, F.S., revising provisions requiring certain simulcast signals be made available to certain permitholders;

Section 20: amends s. 550.6308, F.S., revising the number of days of thoroughbred horse sales that are required to obtain a limited intertrack wagering license;

Section 21: amends s. 551.101, F.S., reorganizing provisions related to the authorization of the possession slot machines and the conduct of slot machine gaming;

Section 22: amends s. 551.102, F.S., reorganizing the definitions section to remove licensing requirements, which are duplicated and placed in the licensing section;

Section 23: amends s. 551.104, F.S., revising provisions for approval of a license to conduct slot machine gaming; specifying that a greyhound permitholder is not required to conduct a full schedule of live racing to maintain a license to conduct slot machine gaming;

Section 24: amends s. 551.114, F.S., requiring certain greyhound permitholders to locate their slot machine gaming area in certain locations;

Section 25: amends s. 551.116, F.S., revising the times that a slot machine gaming area may be open;

Section 26: amends s. 849.086, F.S., revising times a cardroom may operate; specifying that a greyhound permitholder is not required to conduct a minimum number of live racing in order to receive, maintain, or renew a cardroom license; requiring a greyhound permitholder to conduct intertrack wagering on greyhound signals to operate a cardroom;

Section 27: provides for the revocation of certain permits based on the failure to conduct live racing;

Section 28: provides for the application of certain provisions if a provision is determined to be invalid; and

Section 29: provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The fiscal impact of the bill is unknown at this time.

2. Expenditures:

The fiscal impact of the bill is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill is not expected to directly impact local revenues.

2. Expenditures:

The bill is not expected to directly impact local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill reduces current requirements for pari-mutuel wagering licensees, such as reduced requirements for operation by a greyhound permitholder, and limited intertrack wagering licensees, it may reduce private sector costs through increased flexibility.

D. FISCAL COMMENTS:

The fiscal impact of the bill is unknown at the time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect counties or municipalities.

2. Other:

Retroactive Legislation

The bill directs the DPMW to revoke permits issued before January 1, 2012, that have not been used for the conduct of pari-mutuel wagering on horseracing, jai alai and greyhound racing, as defined by the bill. Such permitholders may claim that the retroactive application of this provision violates the Contract Clause of art. I, s. 10, U.S. Constitution, which prohibits states from passing laws which impair contract rights. However, the U.S. Supreme Court has found that "a lottery grant is not in any sense a contract, within the meaning of the constitution of the United States, but is simply a gratuity and license, which the state, under its police powers, and for the protection of the public morals, may at any time revoke, and forbid the further conduct of the lottery."[25]

Compensation Claims

The bill directs the DPMW to revoke permits under specific situations. One of the provisions provides for the revocation of permits issued before January 1, 2012, that have not been used for the conduct of pari-mutuel wagering. Such permitholders may claim that such revocation constitutes a taking warranting compensation.

The Fifth Amendment of the U.S. Constitution provides that private property shall not be taken for public use without just compensation. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."[26] Thus, Florida courts have found no unconstitutional taking in the retroactive application of statutes requiring

[25] *Douglas v. Commonwealth of Kentucky*, 168 U.S. 488 (1897).
[26] *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

revocation of certain occupational licenses and licenses to carry concealed firearms if the licensee was a convicted felon because such licensure is a privilege, not a vested right.[27]

As to pari-mutuel wagering, "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right."[28] Likewise, the Florida Supreme Court has found that "[a]uthorized gambling is a matter over which the state may exercise greater control and exercise its police power in a more arbitrary manner ... ."[29] Thus, the Florida Supreme Court found that, unlike permits to construct a building, "[i]t is doubtful if we can agree with counsel in concluding that a racing permit is a vested interest or right and after once granted cannot be changed."[30]

Furthermore, compensation may not be warranted if the Legislature is deemed to have exercised its police powers, rather than powers of eminent domain.[31] "[T]he Government as condemnor may not be required to compensate a condemnee for elements of value that the Government has created, or that it might have destroyed under the exercise of governmental authority other than the power of eminent domain."[32] Thus, the loss of licenses to sell alcoholic beverages, for example, is not compensable.[33]

Similar arguments have been made in states where pari-mutuel wagering has been prohibited after being licensed for many years. When Massachusetts banned greyhound racing by constitutional amendment in 2008, a licensed and operating dog track challenged the ban as a taking. The Supreme Judicial Court of Massachusetts rejected the argument, finding "[T]he plaintiffs here have no compensable property interest in their racing licenses."[34]

If revoked permits are found to be a taking warranting compensation, just compensation equals the fair market value of the permit at the time of revocation. The fair market value of non-operating permits is uncertain. Such permits are a prerequisite to licensure for pari-mutuel wagering and, by themselves, do not appear to vest the holder with any rights. There are no application fees to receive a permit for pari-mutuel wagering and no fees to retain such a permit. Permits may not be transferred without state approval. While a pari-mutuel wagering permit is one pre-requisite to licensure to conduct cardrooms and slot machines, it is not the only pre-requisite. Not all permitholders may be able to obtain a license to conduct pari-mutuel wagering events, which would require adequate zoning and facilities.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[27] *See, e.g., Crane v. Department of State, Div. of Licensing*, 547 So.2d 266, 267 (Fla. 3rd DCA 1989), citing *Mayo v. Market Fruit Co. of Sanford*, 40 So.2d 555, 559 (Fla. 1949).
[28] *Solimena v. State, Dept. of Business Regulation, Division of Pari-Mutuel Wagering,* 402 So.2d 1240 (Fla. 3rd DCA 1981).
[29] *Hialeah Race Course v. Gulfstream Park Racing Ass'n*, 37 So.2d 692, 694 (Fla. 1948).
[30] *State ex rel. Biscayne Kennel Club v. Stein*, 130 Fla. 517, 520 (Fla. 1938).
[31] *City of Miami Springs v. J.J.T.,* 437 So.2d 200 (Fla. 3rd DCA 1983)("even the complete prohibition of a previously lawful and existing business does not constitute a taking where the owner is not deprived of all reasonable use of his property, as long as the prohibition promotes the health, safety and welfare of the community and is thus a valid exercise of the police power.").
[32] *U. S. v. Fuller*, 409 U.S. 488, 491-492, 93 S.Ct. 801, 804 (U.S. Ariz.1973).
[33] *See, e.g., Yates v. Mulrooney*, 281 N.Y.S. 216, 219 (N.Y. App. Div. 1935); *Mugler v. Kansas*, 123 U.S. 623, 668-70 (1887).
[34] *Carney v. Attorney General*, 451 Mass. 803 (2008).

A bill to be entitled

An act relating to gaming; amending s. 550.002, F.S.; revising the definition of the term "full schedule of live racing or games"; amending s. 550.01215, F.S.; revising provisions for applications for pari-mutuel operating licenses; authorizing a greyhound racing permitholder to indicate on the application that it will operate less than a full schedule of live performances; limiting the number of pari-mutuel wagering operating licenses that may be issued each year; authorizing a greyhound racing permitholder to receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility; authorizing the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to approve changes in racing dates for greyhound racing permitholders under certain conditions; removing a provision for conversion of certain converted permits to jai alai permits; providing requirements for licensure of certain jai alai permitholders; amending s. 550.0251, F.S.; requiring an annual report be made by the division to the Governor and the Legislature; specifying content required for the report; amending s. 550.054, F.S.; providing for revocation of a pari-mutuel permit under certain circumstances; prohibiting transfer of a pari-

mutuel permit or license; revising provisions for conversion of a permit from jai alai to greyhound racing; prohibiting relocation of pari-mutuel facilities and conversion of pari-mutuel permits; repealing s. 550.0555, F.S., relating to the relocation of greyhound racing permits; repealing s. 550.0745, F.S., relating to the conversion of pari-mutuel permits to summer jai alai permits; amending s. 550.0951, F.S.; removing provisions for certain credits for a greyhound racing permitholder; revising the tax on handle for live greyhound racing and intertrack wagering if the host track is a dog track; providing for use of fees collected; amending s. 550.09512, F.S.; providing for the revocation of certain harness racing permits; specifying that a revoked permit may not be reissued; amending s. 550.09514, F.S.; removing certain provisions that prohibit tax on handle until a specified amount of tax savings have resulted; revising purse requirements of a greyhound racing permitholder that conducts live racing; amending s. 550.09515, F.S.; providing for the revocation of certain thoroughbred racing permits; specifying that a revoked permit may not be reissued; amending s. 550.1625, F.S.; removing the requirement that a greyhound racing permitholder pay the breaks tax; repealing s. 550.1647, F.S., relating to

unclaimed tickets and breaks held by greyhound racing permitholders; amending s. 550.1648, F.S.; revising requirements for a greyhound racing permitholder to provide a greyhound adoption booth at its facility; defining the term "bona fide organization that promotes or encourages the adoption of greyhounds"; requiring sterilization of greyhounds before adoption; creating s. 550.2416, F.S.; requiring injuries to racing greyhounds to be reported on a form adopted by the division within a certain timeframe; specifying information that must be included in the form; requiring the division to maintain the forms as public records for a specified time; specifying disciplinary action that may be taken against a licensee of the Department of Business and Professional Regulation who fails to report an injury or who makes false statements on an injury form; exempting injuries to certain animals from reporting requirements; requiring the division to adopt rules; amending s. 550.26165, F.S.; conforming provisions to changes made by the act; amending s. 550.3345, F.S.; revising provisions for a permit previously converted from a quarter horse racing permit to a thoroughbred racing permit; amending s. 550.3551, F.S.; removing a provision that limits the number of out-of-state races on which wagers are accepted by a greyhound racing

permitholder; removing greyhound racing permitholders from a live racing requirement; amending s. 550.615, F.S.; revising provisions relating to intertrack wagering; amending s. 550.6305, F.S.; revising provisions requiring certain simulcast signals be made available to certain permitholders; amending s. 550.6308, F.S.; revising the number of days of thoroughbred horse sales required to obtain a limited intertrack wagering license; revising provisions for such wagering; amending s. 551.101, F.S.; revising provisions that authorize slot machine gaming at certain facilities; amending s. 551.102, F.S.; revising the definition of the terms "eligible facility" and "slot machine licensee" for purposes of provisions relating to slot machines; amending s. 551.104, F.S.; revising provisions for approval of a license to conduct slot machine gaming; specifying that a greyhound racing permitholder is not required to conduct a full schedule of live racing to maintain a license to conduct slot machine gaming; amending s. 551.114, F.S.; requiring certain greyhound racing permitholders to locate their slot machine gaming area in certain locations; amending s. 551.116, F.S.; revising the times that a slot machine gaming area may be open; amending s. 849.086, F.S.; revising times that a cardroom may operate; exempting a greyhound

racing permitholder from a requirement to conduct a minimum number of live racing in order to receive, maintain, or renew a cardroom license under certain conditions; requiring a greyhound racing permitholder to conduct intertrack wagering on greyhound signals to operate a cardroom; directing the division to revoke certain pari-mutuel permits; specifying that the revoked permits may not be reissued; providing severability; providing an effective date.

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

Section 1. Subsection (11) of section 550.002, Florida Statutes, is amended to read:

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

(11)(a) "Full schedule of live racing or games" means:~~,~~

1. For a greyhound racing permitholder or jai alai permitholder, the conduct of a combination of at least 100 live evening or matinee performances during the preceding year.~~; for a permitholder who has a converted permit or filed an application on or before June 1, 1990, for a converted permit, the conduct of a combination of at least 100 live evening and matinee wagering performances during either of the 2 preceding years;~~

2. For a jai alai permitholder that ~~who~~ does not operate slot machines in its pari-mutuel facility, ~~who~~ has conducted at

least 100 live performances per year for at least 10 years after December 31, 1992, and has had ~~whose~~ handle on live jai alai games conducted at its pari-mutuel facility which was ~~has been~~ less than $4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of ~~a combination of~~ at least 40 live ~~evening or matinee~~ performances during the preceding year.~~,~~

3. For a jai alai permitholder that ~~who~~ operates slot machines in its pari-mutuel facility, the conduct of ~~a combination of~~ at least 150 performances during the preceding year.~~,~~

4. For a summer jai alai permitholder, the conduct of at least 58 live performances during the preceding year, unless the permitholder meets the requirements of subparagraph 2.

5. For a harness horse racing permitholder, the conduct of at least 100 live regular wagering performances during the preceding year.~~,~~

6. For a quarter horse racing permitholder at its facility, unless an alternative schedule of at least 20 live regular wagering performances each year is agreed upon by the permitholder and either the Florida Quarter Horse Racing Association or the horsemen ~~horsemen's~~ association representing the majority of the quarter horse owners and trainers at the facility and filed ~~with the division along~~ with its annual operating license ~~date~~ application:~~,~~

a. In the 2010-2011 fiscal year, the conduct of at least

20 regular wagering performances.~~,~~

b. In the 2011-2012 and 2012-2013 fiscal years, the conduct of at least 30 live regular wagering performances.~~, and~~

c. For every fiscal year after the 2012-2013 fiscal year, the conduct of at least 40 live regular wagering performances.~~;~~

7. For a quarter horse racing permitholder leasing another licensed racetrack, the conduct of 160 events at the leased facility during the preceding year.~~; and~~

8. For a thoroughbred racing permitholder, the conduct of at least 40 live regular wagering performances during the preceding year.

(b) ~~For a permitholder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live performances shall constitute the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder.~~ A live performance must consist of no fewer than eight races or games conducted live for each of a minimum of three performances each week at the permitholder's licensed facility under a single admission charge.

Section 2. Subsections (1), (3), and (6) of section

550.01215, Florida Statutes, are amended, subsections (3) through (6) are renumbered as subsections (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

550.01215 License application; periods of operation; bond, conversion of permit.—

(1) Each permitholder shall annually, during the period between December 15 and January 4, file in writing with the division its application for an operating ~~a~~ license ~~to conduct performances~~ during the next state fiscal year. Each application for live performances shall specify the number, dates, and starting times of all live performances that ~~which~~ the permitholder intends to conduct. It shall also specify which performances will be conducted as charity or scholarship performances.

(a) In addition, each application for an operating ~~a~~ license shall include:~~,~~

1. For each permitholder that ~~which~~ elects to accept wagers on broadcast events, the dates for all such events.

2. For each permitholder that elects to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom. ~~or,~~

3. For each thoroughbred racing permitholder that ~~which~~ elects to receive or rebroadcast out-of-state races after 7 p.m., the dates for all performances which the permitholder intends to conduct.

(b) A greyhound racing permitholder that conducted a full schedule of live racing for a period of at least 10 consecutive state fiscal years after the 1996-1997 state fiscal year or that converted its permit to a permit to conduct greyhound racing after that fiscal year may specify in its application for an operating license that it intends to conduct no live racing or less than a full schedule of live racing in the next state fiscal year. A greyhound racing permitholder may receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility pursuant to s. 550.475.

(c) Permitholders may ~~shall be entitled to~~ amend their applications through February 28.

(3) Notwithstanding any other provision of law, no more than 40 pari-mutuel wagering operating licenses may be issued each year. If more than 40 permitholders are eligible for licensure, the division shall issue operating licenses first to those permitholders who conducted pari-mutuel wagering under an operating license in the previous year.

(4) ~~(3)~~ The division shall issue each license no later than March 15. Each permitholder shall operate all performances at the date and time specified on its license. The division shall have the authority to approve minor changes in racing dates after a license has been issued. The division may approve changes in racing dates after a license has been issued when there is no objection from any operating permitholder located

within 50 miles of the permitholder requesting the changes in operating dates. In the event of an objection, the division shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates. In making the determination to change racing dates, the division shall take into consideration the impact of such changes on state revenues. Notwithstanding any other provision of law, and for the 2015-2016 fiscal year only, the division may approve any changes in racing dates for greyhound permitholders if the request for such changes is received before August 31, 2015.

(7) ~~(6)~~ A summer jai alai permitholder may apply for an operating license to operate a jai alai fronton only during the summer season beginning May 1 and ending November 30 of each year on such dates as may be selected by the permitholder. Such permitholder is subject to the same taxes and rules and provisions of this chapter which apply to the operation of winter jai alai frontons. A summer jai alai permitholder is not eligible for licensure to conduct a cardroom or a slot machine facility. A summer jai alai permitholder and a winter jai alai permitholder may not operate on the same days or in competition with each other. This subsection does not prevent a summer jai alai licensee from leasing the facilities of a winter jai alai licensee for the operation of a summer meet. ~~Any permit which was converted from a jai alai permit to a greyhound permit may~~

~~be converted to a jai alai permit at any time if the permitholder never conducted greyhound racing or if the permitholder has not conducted greyhound racing for a period of 12 consecutive months.~~

Section 3. Subsection (1) of section 550.0251, Florida Statutes, is amended to read:

550.0251 The powers and duties of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.—The division shall administer this chapter and regulate the pari-mutuel industry under this chapter and the rules adopted pursuant thereto, and:

(1) The division shall make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall include, at a minimum:

(a) Recent events in the gaming industry, including pending litigation, pending facility license applications, and new and pending rules.

(b) Actions of the commission and the department relative to the implementation and administration of this chapter.

(c) The state revenues and expenses associated with each form of authorized gaming. Revenues and expenses associated with pari-mutuel wagering shall be further delineated by the class of license.

(d) The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot licensee.

(e) A summary of disciplinary actions taken by the department.

(f) Any suggestions to more effectively achieve ~~showing its own actions, receipts derived under the provisions of this chapter, the practical effects of the application of this chapter, and any suggestions it may approve for the more effectual accomplishments of~~ the purposes of this chapter.

Section 4. Paragraph (b) of subsection (9), paragraph (a) of subsection (11), and subsections (13) and (14) of section 550.054, Florida Statutes, are amended, paragraphs (c) through (g) are added to subsection (9), and subsection (15) is added to that section, to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(9)

(b) The division may revoke or suspend any permit or license issued under this chapter upon the willful violation by the permitholder or licensee of any provision of this chapter or of any rule adopted under this chapter. In lieu of suspending or revoking a permit or license, the division may impose a civil penalty against the permitholder or licensee for a violation of this chapter or any rule adopted by the division, except as provided for in subparagraphs (c)-(h). The penalty so imposed may not exceed $1,000 for each count or separate offense. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

(c) The division shall revoke the permit of any permitholder that has not obtained an operating license in accordance with s. 550.01215 for a period of more than 24 consecutive months after June 30, 2012. The division shall revoke the permit upon adequate notice to the permitholder unless such failure was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to operate.

(d) The division shall revoke the permit of any permitholder that does not pay tax on handle for more than 24 consecutive months unless such failure to pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. Financial hardship to the permitholder does not, in and of itself, constitute just cause for failure to pay tax on handle.

(e) Notwithstanding any other provision of law, a new permit to conduct pari-mutuel wagering may not be approved or issued after July 1, 2015.

(f) A permit revoked under this subsection is void and may not be reissued.

(g) A permitholder may apply to the division to place the permit into inactive status for a period of 12 months pursuant to the rules adopted under this chapter. The division, upon good cause shown by the permitholder, may renew inactive status for up to 12 months. A permit may not be in inactive status for a

period of more than 24 consecutive months. Holders of permits in inactive status are not eligible for licensure for pari-mutuel wagering, slot machines, or cardrooms.

(11)(a) A permit granted under this chapter may not be transferred or assigned except upon written approval by the division pursuant to s. 550.1815~~, except that the holder of any permit that has been converted to a jai alai permit may lease or build anywhere within the county in which its permit is located~~.

(13)~~(a)~~ Notwithstanding any provisions of this chapter, a pari-mutuel ~~no thoroughbred horse racing~~ permit or license issued under this chapter may not ~~shall~~ be transferred, or reissued when such reissuance is in the nature of a transfer so as to permit or authorize a licensee to change the location of a pari-mutuel facility, cardroom, or slot machine facility. ~~thoroughbred horse racetrack except upon proof in such form as the division may prescribe that a referendum election has been held:~~

~~1. If the proposed new location is within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and that a majority of the electors voting on that question in such election voted in favor of the transfer of such license.~~

~~2. If the proposed new location is not within the same county as the already licensed location, in the county where the licensee desires to conduct the race meeting and in the county where the licensee is already licensed to conduct the race~~

~~meeting and that a majority of the electors voting on that question in each such election voted in favor of the transfer of such license.~~

~~(b) Each referendum held under the provisions of this subsection shall be held in accordance with the electoral procedures for ratification of permits, as provided in s. 550.0651. The expense of each such referendum shall be borne by the licensee requesting the transfer.~~

(14) Notwithstanding any other provision of law, no pari-mutuel facility, cardroom, or slot machine facility may be relocated and no pari-mutuel permit may be converted to another class of permit.

~~(a) Any holder of a permit to conduct jai alai may apply to the division to convert such permit to a permit to conduct greyhound racing in lieu of jai alai if:~~

~~1. Such permit is located in a county in which the division has issued only two pari-mutuel permits pursuant to this section;~~

~~2. Such permit was not previously converted from any other class of permit; and~~

~~3. The holder of the permit has not conducted jai alai games during a period of 10 years immediately preceding his or her application for conversion under this subsection.~~

~~(b) The division, upon application from the holder of a jai alai permit meeting all conditions of this section, shall convert the permit and shall issue to the permitholder a permit~~

~~to conduct greyhound racing. A permitholder of a permit converted under this section shall be required to apply for and conduct a full schedule of live racing each fiscal year to be eligible for any tax credit provided by this chapter. The holder of a permit converted pursuant to this subsection or any holder of a permit to conduct greyhound racing located in a county in which it is the only permit issued pursuant to this section who operates at a leased facility pursuant to s. 550.475 may move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary and such location is approved under the zoning regulations of the county or municipality in which the permit is located, and upon such relocation may use the permit for the conduct of pari-mutuel wagering and the operation of a cardroom. The provisions of s. 550.6305(9)(d) and (f) shall apply to any permit converted under this subsection and shall continue to apply to any permit which was previously included under and subject to such provisions before a conversion pursuant to this section occurred.~~

Section 5. Section 550.0555, Florida Statutes, is repealed.

Section 6. Section 550.0745, Florida Statutes, is repealed.

Section 7. Section 550.0951, Florida Statutes, is amended to read:

550.0951 Payment of daily license fee and taxes; penalties.—

(1) ~~(a)~~ DAILY LICENSE FEE.—Each person engaged in the business of conducting race meetings or jai alai games under this chapter, hereinafter referred to as the "permitholder," "licensee," or "permittee," shall pay to the division, for the use of the division, a daily license fee on each live or simulcast pari-mutuel event of $100 for each horserace and $80 for each greyhound race ~~dograce~~ and $40 for each jai alai game conducted at a racetrack or fronton licensed under this chapter. A ~~In addition to the tax exemption specified in s. 550.09514(1) of $360,000 or $500,000 per greyhound permitholder per state fiscal year, each greyhound permitholder shall receive in the current state fiscal year a tax credit equal to the number of live greyhound races conducted in the previous state fiscal year times the daily license fee specified for each dograce in this subsection applicable for the previous state fiscal year. This tax credit and the exemption in s. 550.09514(1) shall be applicable to any tax imposed by this chapter or the daily license fees imposed by this chapter except during any charity or scholarship performances conducted pursuant to s. 550.0351.~~ ~~Each~~ permitholder may not be required to ~~shall~~ pay daily license fees in excess of ~~not to exceed~~ $500 per day on any simulcast races or games on which such permitholder accepts wagers regardless of the number of out-of-state events taken or the number of out-of-state locations from which such events are

taken. This license fee shall be deposited with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund.

~~(b) Each permitholder that cannot utilize the full amount of the exemption of $360,000 or $500,000 provided in s. 550.09514(1) or the daily license fee credit provided in this section may, after notifying the division in writing, elect once per state fiscal year on a form provided by the division to transfer such exemption or credit or any portion thereof to any greyhound permitholder which acts as a host track to such permitholder for the purpose of intertrack wagering. Once an election to transfer such exemption or credit is filed with the division, it shall not be rescinded. The division shall disapprove the transfer when the amount of the exemption or credit or portion thereof is unavailable to the transferring permitholder or when the permitholder who is entitled to transfer the exemption or credit or who is entitled to receive the exemption or credit owes taxes to the state pursuant to a deficiency letter or administrative complaint issued by the division. Upon approval of the transfer by the division, the transferred tax exemption or credit shall be effective for the first performance of the next payment period as specified in subsection (5). The exemption or credit transferred to such host track may be applied by such host track against any taxes imposed by this chapter or daily license fees imposed by this chapter. The greyhound permitholder host track to which such~~

~~exemption or credit is transferred shall reimburse such permitholder the exact monetary value of such transferred exemption or credit as actually applied against the taxes and daily license fees of the host track. The division shall ensure that all transfers of exemption or credit are made in accordance with this subsection and shall have the authority to adopt rules to ensure the implementation of this section.~~

(2) ADMISSION TAX.—

(a) An admission tax equal to 15 percent of the admission charge for entrance to the permitholder's facility and grandstand area, or 10 cents, whichever is greater, is imposed on each person attending a horserace, greyhound race ~~dograce~~, or jai alai game. The permitholder shall be responsible for collecting the admission tax.

(b) No admission tax under this chapter or chapter 212 shall be imposed on any free passes or complimentary cards issued to persons for which there is no cost to the person for admission to pari-mutuel events.

(c) A permitholder may issue tax-free passes to its officers, officials, and employees or other persons actually engaged in working at the racetrack, including accredited press representatives such as reporters and editors, and may also issue tax-free passes to other permitholders for the use of their officers and officials. The permitholder shall file with the division a list of all persons to whom tax-free passes are issued under this paragraph.

(3) TAX ON HANDLE.—Each permitholder shall pay a tax on contributions to pari-mutuel pools, the aggregate of which is hereinafter referred to as "handle," on races or games conducted by the permitholder. The tax is imposed daily and is based on the total contributions to all pari-mutuel pools conducted during the daily performance. If a permitholder conducts more than one performance daily, the tax is imposed on each performance separately.

(a) The tax on handle for quarter horse racing is 1.0 percent of the handle.

(b)1. The tax on handle for greyhound racing ~~dogracing~~ is 1.28 ~~5.5~~ percent of the handle~~, except that for live charity performances held pursuant to s. 550.0351, and for intertrack wagering on such charity performances at a guest greyhound track within the market area of the host, the tax is 7.6 percent of the handle~~.

2. The tax on handle for jai alai is 7.1 percent of the handle.

(c)1.a. The tax on handle for intertrack wagering is:

(I) If the host track is a horse track, 2.0 percent of the handle.

(II) If the host track is a harness track ~~horse track~~, 3.3 percent of the handle.

(III) If the host track is a dog track ~~harness track~~, 1.28 ~~5.5~~ percent of the handle to be remitted by the guest track. ~~if the host track is a dog track, and~~

(IV) If the host track is a jai alai fronton, 7.1 percent ~~if the host track is a jai alai fronton~~.

b. The tax on handle for intertrack wagering is 0.5 percent if the host track and the guest track are thoroughbred racing permitholders or if the guest track is located outside the market area of a nongreyhound ~~the~~ host track and within the market area of a thoroughbred racing permitholder currently conducting a live race meet.

c. The tax on handle for intertrack wagering on rebroadcasts of simulcast thoroughbred horseraces is 2.4 percent of the handle and 1.5 percent of the handle for intertrack wagering on rebroadcasts of simulcast harness horseraces.

2. The tax under subparagraph 1. shall be deposited into the Pari-mutuel Wagering Trust Fund.

3.~~2.~~ The tax on handle for intertrack wagers accepted by any dog track located as specified in s. 550.615(6) ~~in an area of the state in which there are only three permitholders, all of which are greyhound permitholders, located in three contiguous counties,~~ from any ~~greyhound permitholder also located within such area or any dog track or~~ jai alai fronton located as specified in s. 550.615(7) ~~550.615(6) or (9)~~, on races or games received from the same class of permitholder located within the same market area, is ~~3.9 percent if the host facility is a greyhound permitholder and, if the host facility is a jai alai permitholder, the rate shall be~~ 6.1 percent except that it shall be 2.3 percent on handle at such time as the total tax on

intertrack handle paid to the division by the permitholder during the current state fiscal year exceeds the total tax on intertrack handle paid to the division by the permitholder during the 1992-1993 state fiscal year.

(d) Notwithstanding any other provision of this chapter, in order to protect the Florida jai alai industry, effective July 1, 2000, a jai alai permitholder may not be taxed on live handle at a rate higher than 2 percent.

(4) BREAKS TAX.—Effective October 1, 1996, each permitholder conducting jai alai performances shall pay a tax equal to the breaks. The "breaks" represents that portion of each pari-mutuel pool which is not redistributed to the contributors or withheld by the permitholder as commission.

(5) PAYMENT AND DISPOSITION OF FEES AND TAXES.—Payments imposed by this section shall be paid to the division. The division shall deposit these sums with the Chief Financial Officer, to the credit of the Pari-mutuel Wagering Trust Fund, hereby established. The permitholder shall remit to the division payment for the daily license fee, the admission tax, the tax on handle, and the breaks tax. Such payments shall be remitted by 3 p.m. Wednesday of each week for taxes imposed and collected for the preceding week ending on Sunday. Beginning on July 1, 2012, such payments shall be remitted by 3 p.m. on the 5th day of each calendar month for taxes imposed and collected for the preceding calendar month. If the 5th day of the calendar month falls on a weekend, payments shall be remitted by 3 p.m. the first Monday

following the weekend. Permitholders shall file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month. Such payments shall be accompanied by a report under oath showing the total of all admissions, the pari-mutuel wagering activities for the preceding calendar month, and such other information as may be prescribed by the division.

(6) PENALTIES.—

(a) The failure of any permitholder to make payments as prescribed in subsection (5) is a violation of this section, and the permitholder may be subjected by the division to a civil penalty of up to $1,000 for each day the tax payment is not remitted. All penalties imposed and collected shall be deposited in the General Revenue Fund. If a permitholder fails to pay penalties imposed by order of the division under this subsection, the division may suspend or revoke the license of the permitholder, cancel the permit of the permitholder, or deny issuance of any further license or permit to the permitholder.

(b) In addition to the civil penalty prescribed in paragraph (a), any willful or wanton failure by any permitholder to make payments of the daily license fee, admission tax, tax on handle, or breaks tax constitutes sufficient grounds for the division to suspend or revoke the license of the permitholder, to cancel the permit of the permitholder, or to deny issuance of any further license or permit to the permitholder.

Section 8. Subsection (3) of section 550.09512, Florida

Statutes, is amended to read:

550.09512 Harness racing ~~horse~~ taxes; abandoned interest in a permit for nonpayment of taxes.—

(3)~~(a)~~ The division shall revoke the permit of a harness horse permitholder who does not pay tax on handle for live harness horse performances for a full schedule of live races for more than 24 consecutive months ~~during any 2 consecutive state fiscal years shall be void and shall escheat to and become the property of the state~~ unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder does ~~shall~~ not, in and of itself, constitute just cause for failure to operate and pay tax on handle. A permit revoked under this subsection is void and may not be reissued.

~~(b) In order to maximize the tax revenues to the state, the division shall reissue an escheated harness horse permit to a qualified applicant pursuant to the provisions of this chapter as for the issuance of an initial permit. However, the provisions of this chapter relating to referendum requirements for a pari-mutuel permit shall not apply to the reissuance of an escheated harness horse permit. As specified in the application and upon approval by the division of an application for the permit, the new permitholder shall be authorized to operate a harness horse facility anywhere in the same county in which the escheated permit was authorized to be operated, notwithstanding~~

~~the provisions of s. 550.054(2) relating to mileage limitations.~~

Section 9. Section 550.09514, Florida Statutes, is amended to read:

550.09514 Greyhound racing ~~dogracing~~ taxes; purse requirements.—

~~(1) Wagering on greyhound racing is subject to a tax on handle for live greyhound racing as specified in s. 550.0951(3). However, each permitholder shall pay no tax on handle until such time as this subsection has resulted in a tax savings per state fiscal year of $360,000. Thereafter, each permitholder shall pay the tax as specified in s. 550.0951(3) on all handle for the remainder of the permitholder's current race meet. For the three permitholders that conducted a full schedule of live racing in 1995, and are closest to another state that authorizes greyhound pari-mutuel wagering, the maximum tax savings per state fiscal year shall be $500,000. The provisions of this subsection relating to tax exemptions shall not apply to any charity or scholarship performances conducted pursuant to s. 550.0351.~~

(1) ~~(2)~~ (a) The division shall determine for each greyhound racing permitholder the annual purse percentage rate of live handle for the state fiscal year 1993-1994 by dividing total purses paid on live handle by the permitholder, exclusive of payments made from outside sources, during the 1993-1994 state fiscal year by the permitholder's live handle for the 1993-1994 state fiscal year. A greyhound ~~Each~~ permitholder conducting live racing during a fiscal year shall pay as purses for such live

races conducted during its current race meet a percentage of its live handle not less than the percentage determined under this paragraph, exclusive of payments made by outside sources, for its 1993-1994 state fiscal year.

(b) Except as otherwise set forth herein, in addition to the minimum purse percentage required by paragraph (a), each greyhound racing permitholder conducting live racing during a fiscal year shall pay as purses an annual amount of $60 for each live race conducted ~~equal to 75 percent of the daily license fees paid~~ by the greyhound ~~each~~ permitholder in ~~for~~ the preceding ~~1994-1995~~ fiscal year. ~~This purse supplement shall be disbursed weekly during the permitholder's race meet in an amount determined by dividing the annual purse supplement by the number of performances approved for the permitholder pursuant to its annual license and multiplying that amount by the number of performances conducted each week. For the greyhound permitholders in the county where there are two greyhound permitholders located as specified in s. 550.615(6), such permitholders shall pay in the aggregate an amount equal to 75 percent of the daily license fees paid by such permitholders for the 1994-1995 fiscal year. These permitholders shall be jointly and severally liable for such purse payments.~~ The additional purses provided by this paragraph must be used exclusively for purses other than stakes and shall be disbursed weekly during the permitholder's race meet. The division shall conduct audits necessary to ensure compliance with this section.

(c)1. Each greyhound racing permitholder, when conducting at least three live performances during any week, shall pay purses in that week on wagers it accepts as a guest track on intertrack and simulcast greyhound races at the same rate as it pays on live races. Each greyhound racing permitholder, when conducting at least three live performances during any week, shall pay purses in that week, at the same rate as it pays on live races, on wagers accepted on greyhound races at a guest track which is not conducting live racing and is located within the same market area as the greyhound racing permitholder conducting at least three live performances during any week.

2. Each host greyhound racing permitholder shall pay purses on its simulcast and intertrack broadcasts of greyhound races to guest facilities that are located outside its market area in an amount equal to one quarter of an amount determined by subtracting the transmission costs of sending the simulcast or intertrack broadcasts from an amount determined by adding the fees received for greyhound simulcast races plus 3 percent of the greyhound intertrack handle at guest facilities that are located outside the market area of the host and that paid contractual fees to the host for such broadcasts of greyhound races.

(d) The division shall require sufficient documentation from each greyhound racing permitholder regarding purses paid on live racing to assure that the annual purse percentage rates paid by each greyhound racing permitholder conducting ~~on the~~

live races are not reduced below those paid during the 1993-1994 state fiscal year. The division shall require sufficient documentation from each greyhound racing permitholder to assure that the purses paid by each permitholder on the greyhound intertrack and simulcast broadcasts are in compliance with the requirements of paragraph (c).

(e) In addition to the purse requirements of paragraphs (a)-(c), each greyhound racing permitholder conducting live races shall pay as purses an amount equal to one-third of the amount of the tax reduction on live and simulcast handle applicable to such permitholder as a result of the reductions in tax rates provided by s. 6 of chapter 2000-354, Laws of Florida ~~this act through the amendments to s. 550.0951(3)~~. With respect to intertrack wagering when the host and guest tracks are greyhound racing permitholders not within the same market area, an amount equal to the tax reduction applicable to the guest track handle as a result of the reduction in tax rate provided by s. 6 of chapter 2000-354, Laws of Florida, ~~this act through the amendment to s. 550.0951(3)~~ shall be distributed to the guest track, one-third of which amount shall be paid as purses at the guest track. However, if the guest track is a greyhound racing permitholder within the market area of the host or if the guest track is not a greyhound racing permitholder, an amount equal to such tax reduction applicable to the guest track handle shall be retained by the host track, one-third of which amount shall be paid as purses at the host track. These purse funds

shall be disbursed in the week received if the permitholder conducts at least one live performance during that week. If the permitholder does not conduct at least one live performance during the week in which the purse funds are received, the purse funds shall be disbursed weekly during the permitholder's next race meet in an amount determined by dividing the purse amount by the number of performances approved for the permitholder pursuant to its annual license, and multiplying that amount by the number of performances conducted each week. The division shall conduct audits necessary to ensure compliance with this paragraph.

(f) Each greyhound racing permitholder conducting live racing shall, during the permitholder's race meet, supply kennel operators and the Division of Pari-Mutuel Wagering with a weekly report showing purses paid on live greyhound races and all greyhound intertrack and simulcast broadcasts, including both as a guest and a host together with the handle or commission calculations on which such purses were paid and the transmission costs of sending the simulcast or intertrack broadcasts, so that the kennel operators may determine statutory and contractual compliance.

(g) Each greyhound racing permitholder conducting live racing shall make direct payment of purses to the greyhound owners who have filed with such permitholder appropriate federal taxpayer identification information based on the percentage amount agreed upon between the kennel operator and the greyhound

owner.

(h) At the request of a majority of kennel operators under contract with a greyhound racing permitholder conducting live racing, the permitholder shall make deductions from purses paid to each kennel operator electing such deduction and shall make a direct payment of such deductions to the local association of greyhound kennel operators formed by a majority of kennel operators under contract with the permitholder. The amount of the deduction shall be at least 1 percent of purses, as determined by the local association of greyhound kennel operators. ~~No~~ Deductions may not be taken pursuant to this paragraph without a kennel operator's specific approval before or after the effective date of this act.

(2)~~(3)~~ For the purpose of this section, the term "live handle" means the handle from wagers placed at the permitholder's establishment on the live greyhound races conducted at the permitholder's establishment.

Section 10. Paragraph (b) of subsection (3) of section 550.09515, Florida Statutes, is amended to read:

550.09515 Thoroughbred racing ~~horse~~ taxes; abandoned interest in a permit for nonpayment of taxes.—

(3)~~(a)~~ The division shall revoke the permit of a thoroughbred horse permitholder that ~~who~~ does not pay tax on handle for live thoroughbred horse performances for a full schedule of live races for more than 24 consecutive months ~~during any 2 consecutive state fiscal years shall be void and~~

~~shall escheat to and become the property of the state~~ unless such failure to operate and pay tax on handle was the direct result of fire, strike, war, or other disaster or event beyond the ability of the permitholder to control. Financial hardship to the permitholder does ~~shall~~ not, in and of itself, constitute just cause for failure to operate and pay tax on handle. A permit revoked under this subsection is void and may not be reissued.

~~(b) In order to maximize the tax revenues to the state, the division shall reissue an escheated thoroughbred horse permit to a qualified applicant pursuant to the provisions of this chapter as for the issuance of an initial permit. However, the provisions of this chapter relating to referendum requirements for a pari-mutuel permit shall not apply to the reissuance of an escheated thoroughbred horse permit. As specified in the application and upon approval by the division of an application for the permit, the new permitholder shall be authorized to operate a thoroughbred horse facility anywhere in the same county in which the escheated permit was authorized to be operated, notwithstanding the provisions of s. 550.054(2) relating to mileage limitations.~~

Section 11. Subsection (2) of section 550.1625, Florida Statutes, is amended to read:

550.1625 Greyhound racing ~~dogracing~~; taxes.—

(2) A permitholder that conducts a greyhound race ~~dograce~~ meet under this chapter must pay the daily license fee, the

admission tax~~, the breaks tax,~~ and the tax on pari-mutuel handle as provided in s. 550.0951 and is subject to all penalties and sanctions provided in s. 550.0951(6).

Section 12. Section 550.1647, Florida Statutes, is repealed.

Section 13. Section 550.1648, Florida Statutes, is amended to read:

550.1648 Greyhound adoptions.—

~~(1)~~ A greyhound racing ~~Each dogracing~~ permitholder conducting live racing at ~~operating~~ a greyhound racing ~~dogracing~~ facility in this state shall provide for a greyhound adoption booth to be located at the facility.

(1)(a) The greyhound adoption booth must be operated on weekends by personnel or volunteers from a bona fide organization that promotes or encourages the adoption of greyhounds ~~pursuant to s. 550.1647~~. Such bona fide organization, as a condition of adoption, must provide sterilization of greyhounds by a licensed veterinarian before relinquishing custody of the greyhound to the adopter. The fee for sterilization may be included in the cost of adoption. As used in this section, the term "weekend" includes the hours during which live greyhound racing is conducted on Friday, Saturday, or Sunday, and the term "bona fide organization that promotes or encourages the adoption of greyhounds" means an organization that provides evidence of compliance with chapter 496 and possesses a valid exemption from federal taxation issued by the

Internal Revenue Service. Information pamphlets and application forms shall be provided to the public upon request.

(b) ~~In addition,~~ The kennel operator or owner shall notify the permitholder that a greyhound is available for adoption and the permitholder shall provide information concerning the adoption of a greyhound in each race program and shall post adoption information at conspicuous locations throughout the greyhound racing ~~dogracing~~ facility. Any greyhound that is participating in a race and that will be available for future adoption must be noted in the race program. The permitholder shall allow greyhounds to be walked through the track facility to publicize the greyhound adoption program.

(2) In addition to the charity days authorized under s. 550.0351, a greyhound racing permitholder may fund the greyhound adoption program by holding a charity racing day designated as "Greyhound Adopt-A-Pet Day." All profits derived from the operation of the charity day must be placed into a fund used to support activities at the racing facility which promote the adoption of greyhounds. The division may adopt rules for administering the fund. Proceeds from the charity day authorized in this subsection may not be used as a source of funds for the purposes set forth in s. 550.1647.

(3)(a) Upon a violation of this section by a permitholder or licensee, the division may impose a penalty as provided in s. 550.0251(10) and require the permitholder to take corrective action.

(b) A penalty imposed under s. 550.0251(10) does not exclude a prosecution for cruelty to animals or for any other criminal act.

Section 14. Section 550.2416, Florida Statutes, is created to read:

550.2416 Reporting of racing greyhound injuries.—

(1) This section may be cited as the "Victoria Q. Gaetz Racing Greyhound Protection Act."

(2) An injury to a racing greyhound which occurs while the greyhound is located in this state must be reported on a form adopted by the division within 7 days after the date on which the injury occurred or is believed to have occurred.

(3) The form shall be completed and signed under oath or affirmation under penalty of perjury by the:

(a) Racetrack veterinarian, if the injury occurred at the racetrack facility; or

(b) Owner, trainer, or kennel operator who had knowledge of the injury, if the injury occurred at a location other than the racetrack facility, including during transportation.

(4) The form must include all of the following:

(a) The greyhound's registered name, right-ear and left-ear tattoo numbers, and, if any, the microchip manufacturer and number.

(b) The name, business address, and telephone number of the greyhound owner, the trainer, and the kennel operator.

(c) The color, weight, and sex of the greyhound.

(d) The specific type and bodily location of the injury, the cause of the injury, and the estimated recovery time from the injury.

(e) If the injury occurred when the greyhound was racing:

1. The racetrack where the injury occurred;

2. The distance, grade, race, and post position of the greyhound when the injury occurred; and

3. The weather conditions, time, and track conditions when the injury occurred.

(f) If the injury occurred when the greyhound was not racing:

1. The location where the injury occurred; and

2. The circumstances surrounding the injury.

(g) Other information that the division determines is necessary to identify injuries to racing greyhounds in this state.

(5) An injury form created pursuant to this section shall be maintained as a public record by the division for at least 7 years after the date it was received.

(6) A licensee of the department who knowingly makes a false statement concerning an injury or fails to report an injury is subject to disciplinary action under this chapter or chapters 455 and 474.

(7) This section does not apply to injuries to a service animal, personal pet, or greyhound that has been adopted as a pet.

(8) The division shall adopt rules to implement this section.

Section 15. Subsection (1) of section 550.26165, Florida Statutes, is amended to read:

550.26165 Breeders' awards.—

(1) The purpose of this section is to encourage the agricultural activity of breeding and training racehorses in this state. Moneys dedicated in this chapter for use as breeders' awards and stallion awards are to be used for awards to breeders of registered Florida-bred horses winning horseraces and for similar awards to the owners of stallions who sired Florida-bred horses winning stakes races, if the stallions are registered as Florida stallions standing in this state. Such awards shall be given at a uniform rate to all winners of the awards, shall not be greater than 20 percent of the announced gross purse, and shall not be less than 15 percent of the announced gross purse if funds are available. In addition, no less than 17 percent nor more than 40 percent, as determined by the Florida Thoroughbred Breeders' Association, of the moneys dedicated in this chapter for use as breeders' awards and stallion awards for thoroughbreds shall be returned pro rata to the permitholders that generated the moneys for special racing awards to be distributed by the permitholders to owners of thoroughbred horses participating in prescribed thoroughbred stakes races, nonstakes races, or both, all in accordance with a written agreement establishing the rate, procedure, and

eligibility requirements for such awards entered into by the permitholder, the Florida Thoroughbred Breeders' Association, and the Florida Horsemen's Benevolent and Protective Association, Inc., except that the plan for the distribution by any permitholder located in the area described in s. 550.615(7) ~~s. 550.615(9)~~ shall be agreed upon by that permitholder, the Florida Thoroughbred Breeders' Association, and the association representing a majority of the thoroughbred racehorse owners and trainers at that location. Awards for thoroughbred races are to be paid through the Florida Thoroughbred Breeders' Association, and awards for standardbred races are to be paid through the Florida Standardbred Breeders and Owners Association. Among other sources specified in this chapter, moneys for thoroughbred breeders' awards will come from the 0.955 percent of handle for thoroughbred races conducted, received, broadcast, or simulcast under this chapter as provided in s. 550.2625(3). The moneys for quarter horse and harness breeders' awards will come from the breaks and uncashed tickets on live quarter horse and harness racing performances and 1 percent of handle on intertrack wagering. The funds for these breeders' awards shall be paid to the respective breeders' associations by the permitholders conducting the races.

Section 16. Subsections (2) and (3) of section 550.3345, Florida Statutes, are amended to read:

550.3345 ~~Conversion of quarter horse permit to a~~ Limited thoroughbred racing permit.—

(2) A limited thoroughbred racing permit previously converted from ~~Notwithstanding any other provision of law, the holder of~~ a quarter horse racing permit pursuant to chapter 2010-29, Laws of Florida, ~~issued under s. 550.334~~ may only be held by~~, within 1 year after the effective date of this section, apply to the division for a transfer of the quarter horse racing permit to~~ a not-for-profit corporation formed under state law to serve the purposes of the state as provided in subsection (1). The board of directors of the not-for-profit corporation must be comprised of 11 members, 4 of whom shall be designated by the applicant, 4 of whom shall be designated by the Florida Thoroughbred Breeders' Association, and 3 of whom shall be designated by the other 8 directors, with at least 1 of these 3 members being an authorized representative of another thoroughbred permitholder in this state. A limited thoroughbred racing ~~The not-for-profit corporation shall submit an application to the division for review and approval of the transfer in accordance with s. 550.054. Upon approval of the transfer by the division, and notwithstanding any other provision of law to the contrary, the not-for-profit corporation may, within 1 year after its receipt of the permit, request that the division convert the quarter horse racing permit to a permit authorizing the holder to conduct pari-mutuel wagering meets of thoroughbred racing. Neither the transfer of the quarter horse racing permit nor its conversion to a limited thoroughbred permit shall be subject to the mileage limitation or the~~

~~ratification election as set forth under s. 550.054(2) or s. 550.0651. Upon receipt of the request for such conversion, the division shall timely issue a converted permit. The converted~~ permit and the not-for-profit corporation are ~~shall be~~ subject to the following requirements:

(a) All net revenues derived by the not-for-profit corporation under the thoroughbred horse racing permit, after the funding of operating expenses and capital improvements, shall be dedicated to the enhancement of thoroughbred purses and breeders', stallion, and special racing awards under this chapter; the general promotion of the thoroughbred horse breeding industry; and the care in this state of thoroughbred horses retired from racing.

(b) From December 1 through April 30, no live thoroughbred racing may be conducted under the permit on any day during which another thoroughbred permitholder is conducting live thoroughbred racing within 125 air miles of the not-for-profit corporation's pari-mutuel facility unless the other thoroughbred permitholder gives its written consent.

(c) After ~~the conversion of the quarter horse racing permit and~~ the issuance of its initial license to conduct pari-mutuel wagering meets of thoroughbred racing, the not-for-profit corporation shall annually apply to the division for a license pursuant to s. 550.5251.

(d) Racing under the permit may take place only at the location for which the original quarter horse racing permit was

issued, which may be leased by the not-for-profit corporation for that purpose~~; however, the not-for-profit corporation may, without the conduct of any ratification election pursuant to s. 550.054(13) or s. 550.0651, move the location of the permit to another location in the same county provided that such relocation is approved under the zoning and land use regulations of the applicable county or municipality~~.

(e) A limited thoroughbred racing ~~No~~ permit ~~converted under this section~~ is not eligible for transfer to another person or entity.

(3) Unless otherwise provided in this section, ~~after conversion,~~ the permit and the not-for-profit corporation shall be treated under the laws of this state as a thoroughbred racing permit and as a thoroughbred racing permitholder, respectively, with the exception of ss. 550.054(9)(c) and (d) and ~~s.~~ 550.09515(3).

Section 17. Paragraph (a) of subsection (6) of section 550.3551, Florida Statutes, is amended to read:

550.3551 Transmission of racing and jai alai information; commingling of pari-mutuel pools.—

(6)(a) ~~A maximum of 20 percent of the total number of races on which wagers are accepted by a greyhound permitholder not located as specified in s. 550.615(6) may be received from locations outside this state.~~ A horseracing or a jai alai permitholder may not conduct fewer than eight live races or games on any authorized race day except as provided in this

subsection. A thoroughbred racing permitholder may not conduct fewer than eight live races on any race day without the written approval of the Florida Thoroughbred Breeders' Association and the Florida Horsemen's Benevolent and Protective Association, Inc., unless it is determined by the department that another entity represents a majority of the thoroughbred racehorse owners and trainers in the state. A harness permitholder may conduct fewer than eight live races on any authorized race day, except that such permitholder must conduct a full schedule of live racing during its race meet consisting of at least eight live races per authorized race day for at least 100 days. Any harness ~~horse~~ permitholder that during the preceding racing season conducted a full schedule of live racing may, at any time during its current race meet, receive full-card broadcasts of harness horse races conducted at harness racetracks outside this state at the harness track of the permitholder and accept wagers on such harness races. With specific authorization from the division for special racing events, a permitholder may conduct fewer than eight live races or games when the permitholder also broadcasts out-of-state races or games. The division may not grant more than two such exceptions a year for a permitholder in any 12-month period, and those two exceptions may not be consecutive.

Section 18. Subsections (2), (4), (6), and (7) of section 550.615, Florida Statutes, are amended, subsections (8), (9), and (10) are renumbered as subsections (6), (7), and (8),

respectively, and amended, and a new subsection (9) is added to that section, to read:

550.615 Intertrack wagering.—

(2) A ~~Any~~ track or fronton licensed under this chapter which conducted a full schedule of live racing or games in the preceding year and any greyhound racing permitholder that conducted a full schedule of live racing for a period of at least 10 consecutive state fiscal years after the 1996-1997 state fiscal year or that converted its permit to a permit to conduct greyhound racing after that fiscal year is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter.

(4) In no event shall any intertrack wager be accepted on the same class of live races or games of any permitholder without the written consent of such operating permitholders conducting the same class of live races or games if the guest track is within the market area of such operating permitholder. A greyhound racing permitholder licensed under this chapter which accepts intertrack wagers on live greyhound signals is not required to obtain the written consent required by this subsection from any operating greyhound racing permitholder within its market area.

~~(6) Notwithstanding the provisions of subsection (3), in any area of the state where there are three or more horserace permitholders within 25 miles of each other, intertrack wagering~~

~~between permitholders in said area of the state shall only be authorized under the following conditions: Any permitholder, other than a thoroughbred permitholder, may accept intertrack wagers on races or games conducted live by a permitholder of the same class or any harness permitholder located within such area and any harness permitholder may accept wagers on games conducted live by any jai alai permitholder located within its market area and from a jai alai permitholder located within the area specified in this subsection when no jai alai permitholder located within its market area is conducting live jai alai performances; any greyhound or jai alai permitholder may receive broadcasts of and accept wagers on any permitholder of the other class provided that a permitholder, other than the host track, of such other class is not operating a contemporaneous live performance within the market area.~~

~~(7) In any county of the state where there are only two permits, one for dogracing and one for jai alai, no intertrack wager may be taken during the period of time when a permitholder is not licensed to conduct live races or games without the written consent of the other permitholder that is conducting live races or games. However, if neither permitholder is conducting live races or games, either permitholder may accept intertrack wagers on horseraces or on the same class of races or games, or on both horseraces and the same class of races or games as is authorized by its permit.~~

(6) ~~(8)~~ In any three contiguous counties of the state where

there are only three permitholders, all of which are greyhound permitholders, if a greyhound racing ~~any~~ permitholder leases the facility of another greyhound racing permitholder for the purpose of conducting all or any portion of ~~the conduct of~~ its live race meet pursuant to s. 550.475, such lessee may conduct intertrack wagering at its pre-lease permitted facility throughout the entire year, including while its live race meet is being conducted at the leased facility~~, if such permitholder has conducted a full schedule of live racing during the preceding fiscal year at its pre-lease permitted facility or at a leased facility, or combination thereof~~.

(7) ~~(9)~~ In any two contiguous counties of the state in which there are located only four active permits, one for thoroughbred horse racing, two for greyhound racing ~~dogracing~~, and one for jai alai games, no intertrack wager may be accepted on the same class of live races or games of any permitholder without the written consent of such operating permitholders conducting the same class of live races or games if the guest track is within the market area of such operating permitholder.

(8) ~~(10)~~ All costs of receiving the transmission of the broadcasts shall be borne by the guest track; and all costs of sending the broadcasts shall be borne by the host track.

(9) A greyhound racing permitholder, identified in subsection (2), operating pursuant to a current year's operating license that specifies no live performances or less than a full schedule of live performances is qualified to:

(a) Receive broadcasts at any time of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholder licensed under this chapter; and

(b) Accept wagers on live races conducted at out-of-state greyhound tracks only on the days when such permitholder receives all live races that any greyhound host track in this state makes available.

Section 19. Paragraphs (d), (f), and (g) of subsection (9) of section 550.6305, Florida Statutes, are amended to read:

550.6305 Intertrack wagering; guest track payments; accounting rules.—

(9) A host track that has contracted with an out-of-state horse track to broadcast live races conducted at such out-of-state horse track pursuant to s. 550.3551(5) may broadcast such out-of-state races to any guest track and accept wagers thereon in the same manner as is provided in s. 550.3551.

(d) Any permitholder located in any area of the state where there are only two permits, one for dogracing and one for jai alai, and any permitholder that converted its permit under s. 550.054(14), as created by s. 6 of chapter 2009-170, Laws of Florida, may accept wagers on rebroadcasts of out-of-state thoroughbred horse races from an in-state thoroughbred horse racing permitholder and shall not be subject to the provisions of paragraph (b) if such thoroughbred horse racing permitholder located within the area specified in this paragraph is both

conducting live races and accepting wagers on out-of-state horseraces. In such case, the guest permitholder shall be entitled to 45 percent of the net proceeds on wagers accepted at the guest facility. The remaining proceeds shall be distributed as follows: one-half shall be retained by the host facility and one-half shall be paid by the host facility as purses at the host facility.

(f) Any permitholder located in any area of the state where there are only two permits, one for dogracing and one for jai alai, and any permitholder that converted its permit under former s. 550.054(14), as created by s. 6 of chapter 2009-170, Laws of Florida, may accept wagers on rebroadcasts of out-of-state harness horse races from an in-state harness horse racing permitholder and shall not be subject to the provisions of paragraph (b) if such harness horse racing permitholder located within the area specified in this paragraph is conducting live races. In such case, the guest permitholder shall be entitled to 45 percent of the net proceeds on wagers accepted at the guest facility. The remaining proceeds shall be distributed as follows: one-half shall be retained by the host facility and one-half shall be paid by the host facility as purses at the host facility.

(g)1.a. Any thoroughbred racing permitholder that ~~which~~ accepts wagers on a simulcast signal must make the signal available to any permitholder that is eligible to conduct intertrack wagering under the provisions of ss. 550.615-

550.6345.

b.~~2.~~ Any thoroughbred racing permitholder that ~~which~~ accepts wagers on a simulcast signal received after 6 p.m. must make such signal available to any permitholder that is eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345~~, including any permitholder located as specified in s. 550.615(6)~~. Such guest permitholders are authorized to accept wagers on such simulcast signal, notwithstanding any other provision of this chapter to the contrary.

c.~~3.~~ Any thoroughbred racing permitholder that ~~which~~ accepts wagers on a simulcast signal received after 6 p.m. must make such signal available to any permitholder that is eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345~~, including any permitholder located as specified in s. 550.615(9)~~. Such guest permitholders are authorized to accept wagers on such simulcast signals for a number of performances not to exceed that which constitutes a full schedule of live races for a quarter horse permitholder pursuant to s. 550.002(11), notwithstanding any other provision of this chapter to the contrary~~, except that the restrictions provided in s. 550.615(9)(a) apply to wagers on such simulcast signals~~.

2. A ~~No~~ thoroughbred racing permitholder may not ~~shall~~ be required to continue to rebroadcast a simulcast signal to any in-state permitholder if the average per performance gross

receipts returned to the host permitholder over the preceding 30-day period were less than $100. Subject to the provisions of s. 550.615(4), as a condition of receiving rebroadcasts of thoroughbred simulcast signals under this paragraph, a guest permitholder must accept intertrack wagers on all live races conducted by all then-operating thoroughbred racing permitholders.

Section 20. Section 550.6308, Florida Statutes, is amended to read:

550.6308 Limited intertrack wagering license.—In recognition of the economic importance of the thoroughbred breeding industry to this state, its positive impact on tourism, and of the importance of a permanent thoroughbred sales facility as a key focal point for the activities of the industry, a limited license to conduct intertrack wagering is established to ensure the continued viability and public interest in thoroughbred breeding in Florida.

(1)(a) Upon application to the division on or before January 31 of each year, any person that is licensed to conduct public sales of thoroughbred horses pursuant to s. 535.01, that has conducted at least 8 ~~15~~ days of thoroughbred horse sales at a permanent sales facility in this state for at least 3 consecutive years, ~~and that has conducted at least 1 day of nonwagering thoroughbred racing in this state, with a purse structure of at least $250,000 per year for 2 consecutive years before such application,~~ shall be issued a license, subject to

the conditions set forth in this section, to conduct intertrack wagering at such a permanent sales facility during the following periods:

1. ~~(a)~~ Up to 21 days in connection with thoroughbred sales;

2. ~~(b)~~ Between November 1 and May 8;

3. ~~(c)~~ Between May 9 and October 31 at such times and on such days as any thoroughbred, jai alai, or a greyhound racing permitholder in the same county is not conducting live performances; provided that any such permitholder may waive this requirement, in whole or in part, and allow the licensee under this section to conduct intertrack wagering during one or more of the permitholder's live performances; and

4. ~~(d)~~ During the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet that is conducted before November 1 and after May 8.

(b) Only ~~No more than~~ one such license may be issued, and the ~~no such~~ license may not be issued for a facility located within 50 miles of any for-profit thoroughbred racing permitholder's licensed track.

(2) If more than one application is submitted for such license, the division shall determine which applicant shall be granted the license. In making its determination, the division shall grant the license to the applicant demonstrating superior capabilities, as measured by the length of time the applicant has been conducting thoroughbred sales within this state or elsewhere, the applicant's total volume of thoroughbred horse

sales, within this state or elsewhere, the length of time the applicant has maintained a permanent thoroughbred sales facility in this state, and the quality of the facility.

(3) The applicant must comply with the provisions of ss. 550.125 and 550.1815.

~~(4) Intertrack wagering under this section may be conducted only on thoroughbred horse racing, except that intertrack wagering may be conducted on any class of pari-mutuel race or game conducted by any class of permitholders licensed under this chapter if all thoroughbred, jai alai, and greyhound permitholders in the same county as the licensee under this section give their consent.~~

(4) ~~(5)~~ The licensee shall be considered a guest track under this chapter. The licensee shall pay 2.5 percent of the total contributions to the daily pari-mutuel pool on wagers accepted at the licensee's facility on greyhound races or jai alai games to the thoroughbred racing permitholder that is conducting live races for purses to be paid during its current racing meet. If more than one thoroughbred racing permitholder is conducting live races on a day during which the licensee is conducting intertrack wagering on greyhound races or jai alai games, the licensee shall allocate these funds between the operating thoroughbred racing permitholders on a pro rata basis based on the total live handle at the operating permitholders' facilities.

Section 21. Section 551.101, Florida Statutes, is amended

to read:

551.101 Slot machine gaming authorized.—Possession of slot machines and conduct of slot machine gaming is only allowed at licensed eligible facilities pursuant to this part and department rule. ~~Any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 may possess slot machines and conduct slot machine gaming at the location where the pari-mutuel permitholder is authorized to conduct pari-mutuel wagering activities pursuant to such permitholder's valid pari-mutuel permit provided that a majority of voters in a countywide referendum have approved slot machines at such facility in the respective county.~~ Notwithstanding any other provision of law, it is not a crime for a person to participate in slot machine gaming at a pari-mutuel facility licensed to possess slot machines and conduct slot machine gaming or to participate in slot machine gaming described in this chapter.

Section 22. Subsections (4) and (11) of section 551.102, Florida Statutes, are amended to read:

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

(4) "Eligible facility" means a ~~any~~ licensed pari-mutuel facility that meets the requirements of s. 551.104(3) ~~located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has~~

~~conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county; any licensed pari-mutuel facility located within a county as defined in s. 125.011, provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license~~, pays the required license ~~licensed~~ fee, and meets the other requirements of this chapter.

(11) "Slot machine licensee" means a pari-mutuel permitholder that ~~who~~ holds a slot machine license ~~issued by the division pursuant to this chapter that authorizes such person to possess a slot machine within facilities specified in s. 23, Art. X of the State Constitution and allows slot machine gaming~~.

Section 23. Subsection (2) and paragraph (c) of subsection (4) of section 551.104, Florida Statutes, are amended to read:

551.104 License to conduct slot machine gaming.—

(2) An application may be approved by the division only if:

(a) The facility at which the applicant seeks to operate slot machines is:

1. A licensed pari-mutuel facility where live racing or games were conducted during calendar years 2002 and 2003, located in Miami-Dade County or Broward County, and authorized for slot machine licensure pursuant to s. 23, Art. X of the State Constitution; or

2. A licensed pari-mutuel facility where a full schedule of live horseracing has been conducted for 2 consecutive calendar years immediately preceding its application for a slot machine license and located within a county as defined in s. 125.011.

(b) ~~after~~ The voters of the county where the applicant's facility is located have authorized by referendum slot machines within pari-mutuel facilities in that county ~~as specified in s. 23, Art. X of the State Constitution~~.

(c) Issuance of the license would not trigger a reduction in revenue-sharing payments under the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee shall:

(c) Conduct no fewer than a full schedule of live racing or games as defined in s. 550.002(11). A permitholder's

responsibility to conduct such number of live races or games shall be reduced by the number of races or games that could not be conducted due to the direct result of fire, war, hurricane, or other disaster or event beyond the control of the permitholder. A greyhound racing permitholder is exempt from the live racing requirement of this paragraph if the permitholder conducted a full schedule of live racing for a period of at least 10 consecutive state fiscal years after the 2002-2003 state fiscal year.

Section 24. Subsections (2) and (4) of section 551.114, Florida Statutes, are amended to read:

551.114 Slot machine gaming areas.—

(2) The slot machine licensee shall display pari-mutuel races or games within the designated slot machine gaming areas and offer patrons within the designated slot machine gaming areas the ability to engage in pari-mutuel wagering on any live, intertrack, and simulcast races conducted or offered to patrons of the licensed facility.

(4) Designated slot machine gaming areas may be located within the current live gaming facility or in an existing building that must be contiguous and connected to the live gaming facility. If a designated slot machine gaming area is to be located in a building that is to be constructed, that new building must be contiguous and connected to the live gaming facility. For a greyhound racing permitholder licensed to conduct pari-mutuel activities pursuant to a current year's

operating license that does not require live performances, designated slot machine gaming areas may be located only within the eligible facility for which the initial annual slot machine license was issued.

Section 25. Section 551.116, Florida Statutes, is amended to read:

551.116 Days and hours of operation.—Slot machine gaming areas may be open daily throughout the year. The slot machine gaming areas may be open ~~a cumulative amount of 18 hours per day on Monday through Friday and~~ 24 hours per day ~~on Saturday and Sunday and on those holidays specified in s. 110.117(1)~~.

Section 26. Paragraph (b) of subsection (7), paragraph (d) of subsection (13), and subsections (16) and (17) of section 849.086, Florida Statutes, are amended, paragraphs (c) and (d) of subsection (5) are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to that subsection, to read:

849.086 Cardrooms authorized.—

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(c) A greyhound racing permitholder is exempt from the live racing requirements of this section if it conducted a full schedule of live racing for a period of at least 10 consecutive state fiscal years after the 1996-1997 state fiscal year or if it converted its permit to a permit to conduct greyhound racing

after that fiscal year. However, as a condition of cardroom licensure, greyhound racing permitholders who are not conducting a full schedule of live racing must conduct intertrack wagering on greyhound signals, to the extent available, on each day of cardroom operation.

(7) CONDITIONS FOR OPERATING A CARDROOM.—

(b) Any cardroom operator may operate a cardroom at the pari-mutuel facility daily throughout the year, if the permitholder meets the requirements under paragraph (5)(b). The cardroom may be open ~~a cumulative amount of 18 hours per day on Monday through Friday and~~ 24 hours per day ~~on Saturday and Sunday and on the holidays specified in s. 110.117(1)~~.

(13) TAXES AND OTHER PAYMENTS.—

(d)1. Each greyhound racing permitholder conducting live racing and jai alai permitholder that operates a cardroom facility shall use at least 4 percent of such permitholder's cardroom monthly gross receipts to supplement greyhound purses or jai alai prize money, respectively, during the permitholder's current or next ensuing pari-mutuel meet.

2. Each thoroughbred and harness horse racing permitholder that operates a cardroom facility shall use at least 50 percent of such permitholder's cardroom monthly net proceeds as follows: 47 percent to supplement purses and 3 percent to supplement breeders' awards during the permitholder's next ensuing racing meet.

3. A ~~No~~ cardroom license or renewal thereof may not ~~shall~~

be issued to an applicant holding a permit under chapter 550 to conduct pari-mutuel wagering meets of quarter horse racing unless the applicant has on file with the division a binding written agreement between the applicant and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the applicant's eligible facility, governing the payment of purses on live quarter horse races conducted at the licensee's pari-mutuel facility. The agreement governing purses may direct the payment of such purses from revenues generated by any wagering or gaming the applicant is authorized to conduct under Florida law. All purses shall be subject to the terms of chapter 550.

(16) LOCAL GOVERNMENT APPROVAL.—The Division of Pari-mutuel Wagering may ~~shall~~ not issue any initial license under this section except upon proof in such form as the division may prescribe that the local government where the applicant for such license desires to conduct cardroom gaming has voted to approve such activity by a majority vote of the governing body of the municipality or the governing body of the county if the facility is not located in a municipality.

(17) CHANGE OF LOCATION; REFERENDUM.—

~~(a)~~ Notwithstanding any provisions of this section, no cardroom gaming license issued under this section shall be transferred, or reissued when such reissuance is in the nature of a transfer, so as to permit or authorize a licensee to change the location of the cardroom. ~~except upon proof in such form as~~

~~the division may prescribe that a referendum election has been held.~~

~~1. If the proposed new location is within the same county as the already licensed location, in the county where the licensee desires to conduct cardroom gaming and that a majority of the electors voting on the question in such election voted in favor of the transfer of such license. However, the division shall transfer, without requirement of a referendum election, the cardroom license of any permitholder that relocated its permit pursuant to s. 550.0555.~~

~~2. If the proposed new location is not within the same county as the already licensed location, in the county where the licensee desires to conduct cardroom gaming and that a majority of the electors voting on that question in each such election voted in favor of the transfer of such license.~~

~~(b) The expense of each referendum held under the provisions of this subsection shall be borne by the licensee requesting the transfer.~~

Section 27. The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation shall revoke any for-profit permit to conduct pari-mutuel wagering when a permitholder has not conducted live events within the 24 months preceding the effective date of this act. A permit revoked under this section may not be reissued.

Section 28. If any provision of this act or its application 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 the provisions of this act are severable.

Section 29. This act shall take effect upon becoming a law.