

Tab 1	CS/SB 326 by GO, Brandes; (Similar to CS/H 1341) State-owned Motor Vehicles					
625186	A	S	L	RCS	AGG, Simpson	Delete L.18: 02/11 04:31 PM
Tab 2	SB 864 by Smith; (Identical to H 0955) State Contracts					
Tab 3	CS/SB 912 by CJ, Flores (CO-INTRODUCERS) Soto; (Similar to CS/H 0761) Fraudulent Activities Associated with Payment Systems					
Tab 4	SB 922 by Montford; (Similar to CS/H 0987) Solid Waste Management					
891642	A	S		RCS	AGG, Dean	Delete L.77 - 185: 02/11 05:03 PM
405980	AA	S		RCS	AGG, Dean	Delete L.42: 02/11 05:03 PM
Tab 5	CS/SB 966 by BI, Benacquisto (CO-INTRODUCERS) Gaetz, Brandes, Negrón, Bean, Hutson, Richter, Detert, Simpson, Simmons, Hays, Stargel, Soto, Bradley; (Similar to CS/H 1041) Unclaimed Property					
Tab 6	CS/SB 992 by BI, Brandes; (Similar to CS/CS/CS/H 0651) Department of Financial Services					
939726	A	S		RCS	AGG, Simpson	Delete L.359 - 372: 02/11 05:09 PM
893118	A	S		RCS	AGG, Simpson	Delete L.434 - 481: 02/11 05:09 PM
246428	A	S		RCS	AGG, Simpson	Delete L.579 - 580: 02/11 05:09 PM
689322	A	S		RCS	AGG, Simpson	btw L.839 - 840: 02/11 05:09 PM
Tab 7	CS/SB 1052 by EP, Hays; (Compare to CS/CS/CS/H 0589) Environmental Control					
726962	D	S		RCS	AGG, Hays	Delete everything after 02/11 05:11 PM
900188	AA	S		RCS	AGG, Hays	Delete L.116 - 127: 02/11 05:11 PM
Tab 8	CS/SB 1176 by EP, Diaz de la Portilla; (Identical to CS/H 0795) Dredge and Fill Activities					
Tab 9	CS/SB 1200 by GO, Bean; (Compare to H 1049) Pay-for-Success Contract Program					
Tab 10	SB 1206 by Abruzzo; (Identical to H 0839) Auditor General					
Tab 11	SB 1226 by Ring; (Identical to H 0981) Administrative Procedures					
Tab 12	SB 1228 by Detert; (Compare to H 0765) Cottage Food Operations					
Tab 13	SB 1270 by Simpson; (Identical to H 4035) Pesticide Registration					
Tab 14	SB 1282 by Dean; (Similar to 1ST ENG/H 7013) Fish and Wildlife Conservation Commission					
436274	A	S		RCS	AGG, Dean	Delete L.91 - 101. 02/15 12:07 PM
833622	A	S		RCS	AGG, Dean	btw L.147 - 148: 02/15 12:07 PM
Tab 15	SB 1300 by Dean; (Similar to H 7025) At-risk Vessels					
Tab 16	CS/SB 1422 by BI, Simmons; (Similar to CS/CS/H 1163) Insurer Regulatory Reporting					
243832	A	S	L	RCS	AGG, Lee	Delete L.202 - 208: 02/15 12:10 PM
166092	A	S	L	RCS	AGG, Lee	btw L.337 - 338: 02/15 12:10 PM

Tab 17 **SB 1428** by **Simmons**; State Investments

Tab 18 **SB 1488** by **Montford**; (Identical to H 0939) Aerial Photographs and Nonproperty Ownership Maps

Tab 19 **CS/SB 1538** by **MS, Evers**; (Similar to CS/H 1219) Veterans Employment

Tab 20 **CS/SB 1604** by **HP, Grimsley**; (Similar to CS/CS/H 1211) Drugs, Devices, and Cosmetics

457132	A	S	RCS	AGG, Altman	Delete L.1918 - 1920:	02/15 12:12 PM
356636	A	S	RCS	AGG, Simpson	btw L.2414 - 2415:	02/15 12:12 PM

Tab 21 **SB 7050** by **GO**; (Compare to CS/CS/CS/H 1033) Information Technology Security

842542	A	S	L	RCS	AGG, Altman	Delete L.228:	02/15 12:16 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON GENERAL
GOVERNMENT
Senator Hays, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, February 11, 2016
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Hays, Chair; Senator Braynon, Vice Chair; Senators Altman, Dean, Lee, Margolis, and Simpson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 326 Governmental Oversight and Accountability / Brandes (Identical H 1341)	State-owned Motor Vehicles; Requiring the Department of Management Services to prepare a plan regarding the centralized management of state-owned motor vehicles; requiring the department to submit the plan to the Governor and the Legislature by a specified date; prescribing requirements for the plan; requiring the department to conduct certain evaluations while developing the plan, etc. GO 11/02/2015 GO 11/17/2015 Fav/CS AGG 02/11/2016 Fav/CS AP	Fav/CS Yeas 5 Nays 0
2	SB 864 Smith (Identical H 955)	State Contracts; Requiring all state contracts in excess of a certain amount to require that call-center services be staffed by persons located within the United States, etc. CM 01/19/2016 Favorable GO 02/01/2016 Favorable AGG 02/11/2016 Favorable AP	Favorable Yeas 5 Nays 0
3	CS/SB 912 Criminal Justice / Flores (Similar CS/H 761)	Fraudulent Activities Associated with Payment Systems; Revising the felony classification for unlawful conveyance of fuel; requiring retail petroleum fuel measuring devices fitted with scanning devices to have certain security measures; requiring the owner or operator of a device to have certain security measures in place within a specified timeframe upon notice from the Department of Agriculture and Consumer Services; requiring the Department of Agriculture and Consumer Services to enforce credit provisions; reducing the number of counterfeit credit cards that a person can be in possession of to qualify as unlawful, etc. CJ 01/25/2016 Fav/CS AGG 02/11/2016 Favorable FP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on General Government
 Thursday, February 11, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 922 Montford (Similar CS/H 987, Compare CS/S 1052)	Solid Waste Management; Providing for the funding of a waste tire abatement program from the Solid Waste Management Trust Fund up to a specified percentage of total funds; authorizing the Department of Environmental Protection to use account funds to contract with a third party for the closing and long-term care of solid waste management facilities under specified circumstances; authorizing waste tire abatement programs under the small county consolidated grant program, etc. EP 01/20/2016 Favorable AGG 02/11/2016 Fav/CS AP	Fav/CS Yeas 5 Nays 0
5	CS/SB 966 Banking and Insurance / Benacquisto (Compare H 1041)	Unclaimed Property; Revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; requiring an insurer to compare records of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File or a certain database or service to determine if a death is indicated; providing the circumstances under which a policy, a contract, or an account is deemed to be in force, etc. BI 01/11/2016 Temporarily Postponed BI 01/19/2016 Fav/CS AGG 02/11/2016 Favorable AP	Favorable Yeas 5 Nays 0
6	CS/SB 992 Banking and Insurance / Brandes (Similar CS/CS/H 651, Compare CS/H 593, CS/S 686)	Department of Financial Services; Authorizing the Department of Financial Services to create an Internet-based transmission system to accept service of process; authorizing the Chief Financial Officer, with the approval of the State Board of Administration, to include specified employees other than state employees in a deferred compensation plan; revising certain standards for carbon monoxide detector devices in specified spaces or rooms of public lodging establishments; revising firefighter and volunteer firefighter certification requirements, etc. BI 01/19/2016 Fav/CS AGG 02/11/2016 Fav/CS AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on General Government
 Thursday, February 11, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1052 Environmental Preservation and Conservation / Hays (Compare CS/CS/H 589, CS/H 987, CS/H 7005, CS/CS/S 552, S 922)	Environmental Control; Prohibiting water management districts from modifying or reducing consumptive use permit allocations if actual water use is less than permitted water use due to water conservation measures or specified circumstances; requiring the Department of Environmental Protection to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply, etc. EP 01/20/2016 Fav/CS AGG 02/11/2016 Fav/CS AP	Fav/CS Yeas 5 Nays 0
8	CS/SB 1176 Environmental Preservation and Conservation / Diaz de la Portilla (Similar H 795)	Dredge and Fill Activities; Revising the acreage of wetlands and other surface waters subject to impact by dredge and fill activities under a state programmatic general permit; providing that seeking to use such a permit consents to specified federal wetland jurisdiction criteria; deleting certain conditions limiting when the department may assume federal permitting programs for the discharge of dredged or fill material, etc. EP 01/27/2016 Fav/CS AGG 02/11/2016 Favorable AP	Favorable Yeas 5 Nays 0
9	CS/SB 1200 Governmental Oversight and Accountability / Bean (Compare H 1049)	Pay-for-Success Contract Program; Authorizing a state agency to enter into a pay-for-success contract with a private entity under certain circumstances; specifying the duties of the state agency; requiring the private entity to annually report to the state agency, etc. GO 01/26/2016 Fav/CS AGG 02/11/2016 Favorable AP	Favorable Yeas 5 Nays 0
10	SB 1206 Abruzzo (Identical H 839)	Auditor General; Requiring the Auditor General to annually conduct a performance audit of a randomly selected state agency, etc. GO 02/01/2016 Favorable AGG 02/11/2016 Favorable AP	Favorable Yeas 5 Nays 0
11	SB 1226 Ring (Identical H 981)	Administrative Procedures; Providing additional requirements for the calculation of estimated adverse impacts and regulatory costs, etc. GO 01/26/2016 Favorable AGG 02/11/2016 Favorable FP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDAAppropriations Subcommittee on General Government
Thursday, February 11, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 1228 Detert (Compare H 765)	Cottage Food Operations; Increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements, etc. CM 01/25/2016 Favorable AGG 02/11/2016 Favorable FP	Favorable Yeas 5 Nays 0
13	SB 1270 Simpson (Identical H 4035)	Pesticide Registration; Deleting provisions relating to supplemental registration fees for certain pesticides that contain active ingredients for which the United States Environmental Protection Agency has established food tolerance limits; deleting a provision requiring the department to publish a list of certain active ingredients, etc. AG 01/19/2016 Favorable AGG 02/11/2016 Favorable AP	Favorable Yeas 5 Nays 0
14	SB 1282 Dean (Similar H 7013)	Fish and Wildlife Conservation Commission; Revising penalties for violations of commission rules relating to control and management of state game lands; authorizing exceptions to the prohibition on spearfishing; revising penalties for violations related to subagent sales of hunting, fishing, and trapping licenses and permits, etc. EP 01/20/2016 Favorable AGG 02/11/2016 Fav/CS AP	Fav/CS Yeas 5 Nays 0
15	SB 1300 Dean (Similar H 7025)	At-risk Vessels; Prohibiting a vessel that is at risk of becoming derelict from anchoring on, mooring on, or occupying the waters of this state; providing that a person who anchors or moors such a vessel or allows it to occupy waters of this state commits a noncriminal infraction, etc. EP 01/27/2016 Favorable AGG 02/11/2016 Favorable FP	Favorable Yeas 5 Nays 0
16	CS/SB 1422 Banking and Insurance / Simmons (Similar CS/H 1163, Compare CS/CS/H 1165, Linked CS/CS/S 1416)	Insurer Regulatory Reporting; Requiring an insurer to maintain a risk management framework; requiring certain insurers and insurance groups to conduct an own-risk and solvency assessment; requiring certain insurers and members of an insurance group to prepare and submit a corporate governance annual disclosure, etc. BI 01/26/2016 Fav/CS AGG 02/11/2016 Fav/CS AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDAAppropriations Subcommittee on General Government
Thursday, February 11, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	SB 1428 Simmons	State Investments; Encouraging the State Board of Administration to determine which publicly traded companies in which the Florida Retirement System Trust Fund is invested operate in Northern Ireland; encouraging the state board to take certain action upon making a determination; providing that the state board is not liable or subject to a cause of action under the act, etc. GO 02/01/2016 Favorable AGG 02/11/2016 Favorable AP	Favorable Yeas 5 Nays 0
18	SB 1488 Montford (Identical H 939, Compare H 7099)	Aerial Photographs and Nonproperty Ownership Maps; Revising the county population thresholds for purposes of identifying the governmental entity responsible for payment of aerial photographs and nonproperty ownership maps, etc. CA 02/01/2016 Favorable AGG 02/11/2016 Favorable AP	Favorable Yeas 5 Nays 0
19	CS/SB 1538 Military and Veterans Affairs, Space, and Domestic Security / Evers (Similar CS/H 1219)	Veterans Employment; Requiring each state agency and authorizing other political subdivisions of the state to develop and implement a veterans recruitment plan; requiring specified goals for veterans recruitment plans; requiring the Department of Management Services to collect specified data and to include the data in its annual workforce report and on its website, etc. MS 01/26/2016 Fav/CS AGG 02/11/2016 Favorable AP	Favorable Yeas 5 Nays 0
20	CS/SB 1604 Health Policy / Grimsley (Similar CS/H 1211)	Drugs, Devices, and Cosmetics; Providing, revising, and deleting definitions for purposes of the Florida Drug and Cosmetic Act; revising prohibited acts related to the distribution of prescription drugs; providing for the expiration, renewal, and issuance of certain drug, device, and cosmetic product registrations; revising the definition of "wholesale distribution" for purposes of medical gas requirements, etc. HP 01/26/2016 Fav/CS AGG 02/11/2016 Fav/CS AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on General Government
Thursday, February 11, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	SB 7050 Governmental Oversight and Accountability (Compare CS/CS/H 1033, H 1035, CS/H 1037, CS/S 624)	Information Technology Security; Revising the membership of the Technology Advisory Council to include a cybersecurity expert; requiring the council, in coordination with the Florida Center for Cybersecurity, to identify and recommend STEM training opportunities; providing for the establishment of computer security incident response teams within state agencies; revising entities directed to adopt a unified state plan for K-20 STEM education to include the Technology Advisory Council, etc. AGG 02/11/2016 Fav/CS AP	Fav/CS Yeas 5 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: PCS/CS/SB 326 (189108)

INTRODUCER: Appropriations Subcommittee on General Government; Governmental Oversight and Accountability Committee; and Senator Brandes

SUBJECT: State-owned Motor Vehicles

DATE: February 15, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 326 requires the Department of Management Services (DMS) to prepare a plan regarding the centralized management of state-owned motor vehicles. The bill requires the DMS to submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2017.

The DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

The bill has an indeterminate fiscal impact.

The bill takes effect upon becoming a law.

II. Present Situation:

Department of Management Services

One of the duties of the Department of Management Services (DMS) is to obtain the most effective and efficient use of motor vehicles, watercraft, and aircraft for state purposes.¹

¹ Section 287.16, F.S.

Chapter 287, F.S., Part II: Means of Transport (ss. 287.14 – 297.20) governs the purchase or lease of motor vehicles.² Chapter 287, F.S., Part II, applies to motor vehicles, watercraft, and aircraft owned leased, or acquired in any manner by any state agency, or the judicial branch.³ It is unlawful for a state officer or employee to authorize the purchase or continuous lease of any motor vehicle to be paid out of state funds or any agency funds unless such funds have been appropriated by the Legislature.⁴ All motor vehicles purchased or leased must be in the subcompact class, with exceptions for law enforcement, towing, transportation of more than three adults or bulk material, and vehicles operated on unpaved roads.⁵ Motor vehicles needed for an emergency or to meet unforeseen or emergency situations are allowed, if approved by the Executive Office of the Governor after consulting with the legislative appropriations committees.⁶ Vehicles for which replacement funds have been appropriated may not be retained in service unless an emergency or major unforeseen need exists.⁷ Any motor vehicle retained for this purpose must be reported to the Legislature in subsequent agency budget request documents that detail the specific justification for retention of each vehicle.⁸ Motor vehicles may not be acquired on a deferred payment contract that requires payment of interest or its equivalent except when specifically approved by the Governor's Office in consultation with the legislative appropriations committees.⁹

A state agency must obtain prior approval from the DMS for purchasing, leasing, or acquiring any motor vehicle, watercraft, or aircraft of any type.¹⁰ The DMS approval is not required for casual (short-term) lease of motor vehicles by state agencies.¹¹ Funding in the General Appropriations Act is not allowed for purchases of vehicles in excess of prices negotiated by the DMS.¹² Also, with the DMS approval, special authorization is given to the Department of Children and Families, the Agency for Persons with Disabilities, the Department of Health, the Department of Juvenile Justice, and the Department of Corrections to secure automobiles, trucks, tractors, and other automotive equipment for use at institutions, centers, residential facilities and county health departments under their respective jurisdictions.¹³

Use of state-owned or leased vehicles or aircraft is limited to travel necessary to carry out employee job assignments, official state business, security and emergency activity.¹⁴ State employees whose duties are those of law enforcement¹⁵ have more latitude in their use of state

² Section 287.14(2), F.S., defines the term "motor vehicle" as any automobile or light truck. Motor vehicle also includes any airplane or other vehicle designed primarily for transporting persons.

³ Section 287.20, F.S.

⁴ Section 287.14(3), F.S.

⁵ Section 287.151(1), F.S.

⁶ Section 287.14(3), F.S.

⁷ Section 287.14(4), F.S.

⁸ *Id.*

⁹ Section 287.14(5), F.S.

¹⁰ Section 287.15, F.S.

¹¹ *Id.*

¹² Section 287.151(2), F.S.

¹³ Section 287.155, F.S.

¹⁴ Section 287.17(2)(a)-(d), F.S.

¹⁵ Section 943.10(1), F.S., defines the term "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel

owned or leased motor vehicles for official state business.¹⁶ Use of a state owned or leased motor vehicle for commuting is prohibited unless special assignment is authorized as a prerequisite by the DMS, the vehicle is required after hours to perform position duties, or an employee's home is his or her official base of operations.¹⁷ A state agency head may assign a motor vehicle to a state officer or employee only if the officer or employee is projected to drive the motor vehicle a minimum of 10,000 miles annually on state business, unless the agency head provides written justification for the need of the assignment of the motor vehicle.¹⁸ Priority for vehicle assignment is given to those state employees who drive over 15,000 miles annually on state business.¹⁹

Bureau of Fleet Management

The Bureau of Fleet Management and Federal Property Assistance within the DMS provides oversight responsibility for the state's fleet of motor vehicles and mobile equipment, along with the federal surplus property program.²⁰ The Bureau of Fleet Management manages the purchase, operation, maintenance and disposal of the state's fleet of motor vehicles and watercraft.²¹ The state's fleet includes approximately 25,000 units, consisting of automobiles and light trucks, medium and heavy trucks, aircraft, construction and industrial equipment, marine equipment (e.g., boats, airboats, boat engines, etc.), trailers, tractors and mowers, small utility, motorcycles and all-terrain vehicles.²² The Division of Fleet Management determines the motor vehicles and watercraft included on state contracts, develops technical bid specifications and assists in evaluating contracts.

The Division of Fleet Management operates the Florida Equipment Electronic Tracking (FLEET) system, which provides the management, reporting and cost information required to effectively and efficiently manage the state's fleet and to account for equipment use and expenditures. The FLEET Online System:²³

- Requires agencies to keep records and make reports regarding the effective and efficient use, operation, maintenance, repair and replacement of automobiles, light trucks, small and large (greater than 1 ton) vehicles and equipment designed primarily for transporting people and legal to operate on public roads, watercraft and aircraft; and
- Assures the efficient and safe use of motor vehicles and that they are used only for official state business.

whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

¹⁶ Section 287.17(3)(b), F.S., provides that the term "official state business" shall be construed to permit the use of the vehicle during normal duty hours to and from lunch or meal breaks and incidental stops for personal errands, but not substantial deviations from official state business, if such use is at the direction of or with the permission of the agency head.

¹⁷ Section 287.17(3)(a), F.S.

¹⁸ Section 287.17(4)(a), F.S.

¹⁹ *Id.*

²⁰ See http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance (last visited on Oct. 26, 2015).

²¹ See http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management (last visited on Oct. 26, 2015). *Also, see* Chapters 60B-1(Motor Vehicles and Watercraft Acquisition, Assignment and Use) and 60B-3(Disposal of Motor Vehicles, Watercraft, and Aircraft), F.A.C.

²² See http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance (last visited on Dec. 14, 2015).

²³ *Id.*

The goals of the Division of Fleet Management are to:²⁴

- Ensure the state purchases quality and energy efficient motor vehicles, equipment and watercraft;
- Achieve maximum feasible return from disposal of used and surplus equipment;
- Return surplus equipment to governmental service when practical;
- Restrict use of state equipment to official state business;
- Provide management reports and data required to properly manage state fleet; and
- Provide reports to assure accountability of equipment expenditures and use.

Climate-Friendly Public Business Provisions

Section 286.29, F.S., outlines climate-friendly public business provisions required by state agencies. Some of these practices include requiring all state agencies to ensure that all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption.²⁵ Each agency must measure and report compliance to the DMS through the Equipment Management Information System database.²⁶ Also, state agencies, universities, community colleges, and local governments that purchase motor vehicles under a state purchasing plan are required to define the intended purpose of vehicle and use class for which vehicle is being procured.²⁷ Additionally, all state agencies must use ethanol and biodiesel blended fuels when available.²⁸ State agencies with central fueling operations for state-owned vehicles must procure biofuels for fleet needs to the greatest extent practicable.²⁹

State Agency Fleets

Table 1 shows the various fleets of state agencies. Some state agencies report heavy equipment in the FLEET system, but the DMS cannot state definitively that this data accurately reflects all heavy equipment owned or leased by state agencies.³⁰ The list of aircraft in Table 1 also is not complete as some agencies with aircraft do not document this data in the FLEET system.³¹ The DMS is in the process of requiring all state agencies to report their inventory of aircraft in the FLEET system.³² Table 2 shows the funds appropriated to the various agencies for the purchase of vehicles during the last five fiscal years.

²⁴ *Id.*

²⁵ Section 286.26(3), F.S.

²⁶ *Id.*

²⁷ Section 286.29(4), F.S.

²⁸ Section 286.29(5), F.S.

²⁹ *Id.*

³⁰ E-mail from Ricky Moulton, Deputy Director of Legislative Affairs, DMS, dated November 5, 2015 (copy of e-mail on file with the Governmental and Accountability Committee).

³¹ *Id.*

³² *Id.*

Table 1. Agency Fleets

Agency	Vehicles	Aircraft	Water-craft	Heavy Equipment	Other*
First District Court of Appeals	1	-	-	-	-
Agriculture and Consumer Services	2,694	26	32	539	1,121
Agency for Health Care Administration	1	-	-	-	-
Agency for Persons with Disabilities	333	-	1	-	-
Business and Professional Regulation	510	-	-	-	-
Citrus Commission	1	-	-	-	-
Children and Families	511	-	-	-	-
Economic Opportunities	5	-	-	-	-
Environmental Protection	1,148	-	84	10	256
Financial Services	522	-	-	7	55
Juvenile Justice	557	-	-	-	14
Law Enforcement	662	3	-	-	-
Military Affairs	110	-	-	-	-
Management Services	74	-	-	-	3
Education	43	-	-	-	-
Health	379	-	-	-	-
Lottery	204	-	-	2	-
Revenue	15	-	-	2	-
State	24	-	3	-	-
Transportation	3,249	1	51	888	712
Veterans' Affairs	19	-	-	-	-
Executive Office of the Governor	26	-	-	-	-
Florida Commission on Offender Review	2	-	-	-	-
Corrections	2,932	-	-	22	158
Fish and Wildlife Conservation Commission	1,821	-	827	43	158
Highway Safety and Motor Vehicles	2,921	9	-	29	129
Justice Administration Commission	604	-	-	-	-
Northwood State Resource Center	1	-	-	-	-
Office of the Attorney General	135	-	-	-	-
Public Service Commission	25	-	-	-	-
School for the Deaf and Blind	45	-	-	-	-
TOTALS	19,574	39	998	1,542	2,606
*Other includes tractors, trailers, mowers, all-terrain vehicles, etc.					

Table 2. Five year history of appropriations relating to vehicle acquisition and replacement.

Agency	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
First District Court of Appeals	-	-	-	-	-
Agriculture and Consumer Services	100,000	606,500	1,042,758	1,521,286	2,791,165
Agency for Health Care Administration	-	-	-	-	-
Agency for Persons with Disabilities	-	-	-	-	-
Business and Professional Regulation	892,346	990,346	1,011,346	917,346	1,373,768
Citrus Commission	-	-	-	-	-
Children and Families	20,000	20,000	20,000	20,000	20,000
Economic Opportunities	-	-	-	21,000	-
Environmental Protection	141,135	141,135	301,135	141,135	515,288
Financial Services	790,217	869,417	790,217	1,833,523	1,240,217
Juvenile Justice	459,285	459,285	459,285	459,285	459,285
Law Enforcement	973,173	973,173	973,173	1,120,173	1,569,369
Military Affairs	253,678	849,678	897,178	743,809	363,678
Management Services	-	-	-	-	-
Education	100,000	100,000	100,000	100,000	100,000
Health	3,033,109	3,033,109	3,033,109	2,077,641	2,041,109
Lottery	177,070	340,000	340,000	1,205,000	340,000
Revenue	-	-	-	57,988	-
State	-	-	-	21,000	56,132
Transportation	4,210,602	4,270,602	4,210,602	4,210,602	4,245,602
Veterans' Affairs	-	-	391,299	-	23,750
Executive Office of the Governor	73,648	175,000	120,000	65,000	65,000
Florida Commission on Offender Review	-	-	-	-	-
Corrections	4,653	454,653	504,653	504,653	2,254,653
Fish and Wildlife Conservation Commission	12,500	600,177	438,707	12,500	12,500
Highway Safety and Motor Vehicles	9,400,130	11,136,314	12,487,111	10,959,291	12,228,311
Justice Administration Commission	440,733	3,138,258	1,833,586	1,784,242	1,546,578

Agency	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Northwood State Resource Center	-	-	-	-	-
Office of the Attorney General	257,478	257,478	257,478	257,478	300,000
Public Service Commission	72,055	72,055	-	50,538	-
School for the Deaf and Blind	-	-	-	-	-
TOTALS	\$21,411,812	\$28,487,180	\$29,211,637	\$28,083,490	\$31,546,405

FLEET Management Business Case

The Fiscal Year 2013-2014 General Appropriations Act included \$224,000 to fund a FLEET Management Business Case (Business Case). The DMS contracted with Mercury Associates, Inc., in July 2013 to identify the best options for managing the state's fleet and to document recommendations in a formal business case.³³ The Business Case presents a strategic review of fleet management activities in the state and contains an analysis report and recommendations for improving the performance and cost effectiveness of Florida's state-wide fleet operations. The program areas of focus included:

- Business Case
 - Background information;
 - Evaluation of options;
 - Information or recommended options; and
 - Cost benefit analysis.
- Review and recommend fleet options, management tools, policies and performance measure to support agency travel needs.
- Develop business and functional requirements for a Quality Assurance Program including a system for tracking key performance measures and controlling costs through accountability.
- Review and recommend the target size for the state fleet.³⁴

The Business Case was completed in December 2013 and concluded that the FLEET system is the least capable system we [Mercury Associates, Inc.] have encountered in any of the 34 states they have reviewed.³⁵ As a consequence, much of the detailed data Mercury required to conduct this study was either not available or was only available at a summary level.³⁶ In addition, the Business Case identified 43 detailed recommendations. These recommendations were summarized into areas in the DMS's Legislative Budget Request, Schedule IV-B, and are summarized below:

- Fleet Administration - Expand the DMS role and increase staff resources to provide increased and centralized oversight, analysis, and services to manage the state's fleet.

³³ See https://www.justiceadmin.org/jac/Fleet_Management_Business_Case_Final.pdf (last visited December 17, 2015).

³⁴ Contract Between Florida Department of Management Services and Mercury Associates, Inc., Contract No.: DMS-12/13-008, FLEET Management Consulting Services, Attachment B-Scope of Work. See <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=MP004>

³⁵ See https://www.justiceadmin.org/jac/Fleet_Management_Business_Case_Final.pdf (last visited December 15, 2015)..

³⁶ *Id.*

- Fleet Management Information System - Replace the existing in-house developed system (FLEET) with a more robust, fully featured and user friendly, intuitive Commercial Off the Shelf (COTS) application that allows easy distribution of information to all fleet users, customers, and management in a real-time environment.
- Fleet Replacement and Financing - Centralize fleet replacement planning and budgeting in the DMS, identify optimal replacement cycles for key types of vehicles, develop a long-term fleet replacement planning program, and adopt leasing as the primary means of financing fleet renewal.
- Fleet Size and Utilization - Conduct a study to reduce the size of the fleet by eliminating low use vehicles, study the feasibility of establishing shared-use motor pool locations in Tallahassee, develop and implement an ongoing fleet utilization monitoring system, and mandate the use of charge-back rates as a financial incentive for agencies to maintain an optimized fleet size.
- Fleet Acquisition - Develop, formalize and document a policy and process for vehicle specification, solicitation and selection that incorporates best practice elements.
- Fleet Disposal - Conduct an analysis of the cost and benefits of employing various resale methods to dispose of vehicles. Use the results to establish core methods for various types of equipment. Formalize and document a policy and process for vehicle disposal that incorporates the best practice elements, including minimizing days to sale and return of funds to the agency fleet. Establish performance metrics to actively monitor and manage disposal outcomes.
- Fleet Maintenance and Repair - Open shops to all agencies; develop standards and consistent shop procedures; consolidate shops; outsource large shops and outsource all sublet repair to a maintenance service provider.
- Fleet Fueling - Review the current state contract for bulk fuel; complete a justification audit of all current sites; develop uniform pricing, chargeback and processing methods; develop and implement a fuel management program; establish electronic interface for fuel, mileage and repair data.³⁷

III. Effect of Proposed Changes:

Section 1 requires the Department of Management Services (DMS) to prepare a plan for the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles. The DMS must submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2017.

The plan must provide a method for:

- Using break-even mileage³⁸ in the assignment and administration of motor vehicles to state agencies and employees to determine when it becomes cost effective to the state to provide assigned motor vehicles to employees;

³⁷ Fiscal Year 2016-2017, DMS LBR Manual Exhibits, Issue 4400600 Schedule IV-B page 204, document available on the Florida Fiscal portal at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13920&DocType=PDF>

³⁸ A breakeven analysis identifies the mileage at which vehicles should be purchased as opposed to the state agency reimbursing employees for work mileage in their personal vehicles. See http://www.dms.myflorida.com/content/download/98763/571269/Fleet_Management_Business_Case_Final.pdf (last visited Oct. 26, 2015). Also, see Office of Program Policy Analysis & Governmental Accountability, The Florida Legislature, *Centralizing Vehicle Fleet Operations and Implementing Cost-Saving Strategies Could Reduce State Spending*, Report No.

- Managing a fleet of motor vehicles for short-term use and shared-use motor vehicle pools;
- Developing a motor vehicle replacement plan and budget, which must take into account operating and maintenance costs of the centralized fleet;
- Purchasing motor vehicles necessary for the operation of the centralized fleet;
- Repairing and maintaining motor vehicles;
- Monitoring the use of motor vehicles and enforcing regulations regarding proper use;
- Maintaining records related to the operation and maintenance of motor vehicles and the administration of the fleet;
- Disposing of motor vehicles that are no longer needed or the use of which is not cost effective;
- Monitoring and managing motor vehicle disposal outcomes to determine the most cost-effective method of disposing fleet vehicles;
- Implementing a fuel management program and a standardized methodology for reporting fuel data;
- Determining when it would be cost-efficient to lease a motor vehicle from a third-party vendor instead of using a state-owned motor vehicle;
- Determining when it would be cost-efficient to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for fleet use; and
- Equipping fleet motor vehicles with real-time locational monitoring systems.

The DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

Section 2 provides that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

11-16 (April 2011) (copy on file with the Governmental Oversight and Accountability Committee). DMS calculated that the breakeven point for assignment of a state-owned vehicle at 7,448 miles driven for a 2010 Ford Fusion, the type of vehicle most state employees require.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The fiscal impact of PCS/CS/SB 326 is indeterminate. It is unknown at this time if the DMS would utilize contract services or agency staff to develop the plan required in the bill.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate. The Legislature appropriated \$224,000 during the 2013 Session for the FLEET Management Business Case (Business Case), which provided recommendations, a plan, costs and benefits, and implementation timelines. The plan required of the DMS by the bill may have a similar fiscal impact.

The plan required of the DMS, if implemented, may identify significant indeterminate cost-savings to the state comparable to costs and benefits provided in the Business Case. Based on the Business Case, opportunities to achieve cost savings include a five year cumulative benefit of implementing the operating best practice recommendations (estimated at \$8.8 million annually) and right sizing recommendations (estimated at \$2.1 million annually) that total \$26.8 million in projected savings.³⁹

According to the DMS, a thorough fiscal analysis of the costs associated with this bill cannot be conducted with the current Florida Equipment Electronic Tracking (FLEET) system.⁴⁰ The current FLEET system does not provide the granularity in data to assign costs to specific activities.⁴¹ A new Fleet Management Information system is needed to extract key data elements, track performance, identify costs and provide reports⁴² and has been requested in the agency's Fiscal Year 2016-2017 Legislative Budget Request for \$1,761,243. The DMS has stated that it would need at least two years to collect the data necessary to provide the information requested in the plan, including the time necessary to complete the new system.⁴³

VI. Technical Deficiencies:

None.

³⁹ See https://www.justiceadmin.org/jac/Fleet_Management_Business_Case_Final.pdf (last visited December 17, 2015).

⁴⁰ See *2016 Department of Management Services Legislative Bill Analysis for SB 326*, September 24, 2015 (on file with Senate Appropriation Subcommittee on General Government) at 4.

⁴¹ *Id.*

⁴² *Id.*

⁴³ FLEET Management Briefing with DMS staff on December 15, 2015.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates a new section of law that most likely will not be codified in the Florida Statutes because of its time-limited application.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:

Changes the date that the plan is to be submitted from November 1, 2016, to November 1, 2017, which allows the DMS an additional year to prepare the plan.

CS by Governmental Oversight and Accountability on November 17, 2015:

CS/SB 326 differs from SB 326 in the following way:

- The DMS centralized fleet management plan must provide methods for determining when it would be cost effective to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for fleet use rather than providing methods for determining when it would be cost effective to use alternative fuels or to lease or purchase alternative energy motor vehicles for fleet use.

B. Amendments:

None.



625186

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment

Delete line 18
and insert:
1, 2017, the department shall submit the plan to the Governor,

By the Committee on Governmental Oversight and Accountability;
and Senator Brandes

585-01304-16

2016326c1

A bill to be entitled

An act relating to state-owned motor vehicles;
requiring the Department of Management Services to
prepare a plan regarding the centralized management of
state-owned motor vehicles; requiring the department
to submit the plan to the Governor and the Legislature
by a specified date; prescribing requirements for the
plan; requiring the department to conduct certain
evaluations while developing the plan; providing an
effective date.

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

Section 1. Centralized fleet management plan.—

(1) The Department of Management Services shall prepare a
plan regarding the creation, administration, and maintenance of
a centralized fleet of state-owned motor vehicles. By November
1, 2016, the department shall submit the plan to the Governor,
the President of the Senate, and the Speaker of the House of
Representatives.

(2) The plan for centralizing all state-owned motor
vehicles must provide a method for:

(a) Using break-even mileage in the assignment and
administration of motor vehicles to state agencies and employees
to determine when it becomes cost effective to the state to
provide assigned motor vehicles to employees.

(b) Managing a fleet of motor vehicles for short-term use
and shared-use motor vehicle pools.

(c) Developing a motor vehicle replacement plan and budget,

585-01304-16

2016326c1

which must take into account operating and maintenance costs of
the centralized fleet.

(d) Purchasing motor vehicles necessary for the operation
of the centralized fleet.

(e) Repairing and maintaining motor vehicles.

(f) Monitoring the use of motor vehicles and enforcing
regulations regarding proper use.

(g) Maintaining records related to the operation and
maintenance of motor vehicles and the administration of the
fleet.

(h) Disposing of motor vehicles that are no longer needed
or the use of which is not cost effective.

(i) Monitoring and managing motor vehicle disposal outcomes
to determine the most cost-effective method of disposing fleet
vehicles.

(j) Implementing a fuel management program and a
standardized methodology for reporting fuel data.

(k) Determining when it would be cost-efficient to lease a
motor vehicle from a third-party vendor instead of using a
state-owned motor vehicle.

(l) Determining when it would be cost-efficient to use
alternative fuel vehicles, electric vehicles, or extended-range
electric vehicles or to lease or purchase such vehicles for
fleet use.

(m) Equipping fleet motor vehicles with real-time
locational monitoring systems.

(3) In developing the plan, the department shall evaluate
the costs and benefits of operating and maintaining a
centralized motor vehicle fleet compared to the costs and

585-01304-16

2016326c1

59 benefits of contracting with a third-party vendor for the
60 operation and maintenance of a centralized motor vehicle fleet.
61 Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/11/2016

Meeting Date

326

Bill Number (if applicable)

Topic Government oversight

Amendment Barcode (if applicable)

Name Antonio Davis

Job Title Veteran Homeless

Address 2313 NW 6th Court

Phone 762

Street

Ft. Lauderdale FL

33311

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb. 11, 2016

Meeting Date

CS/SB 326

Bill Number (if applicable)

Topic State-Owned Motor Vehicles

Amendment Barcode (if applicable)

Name Bob Nave

Job Title Vice President, Research

Address 106 N. Bronough Street

Phone 850.222.5052

Street

Tallahassee

FL

32301

Email bnave@floridataxwatch.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida TaxWatch

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: November 17, 2015

I respectfully request that **Senate Bill #326**, relating to **State-owned Motor Vehicles**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: SB 864

INTRODUCER: Senator Smith

SUBJECT: State Contracts

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
4.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 864 requires that any state agency contract for services exceeding \$35,000 must specify that all call-center services provided pursuant to the contract must be staffed by persons located within the United States.

This bill has an indeterminate fiscal impact.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Chapter 287, F.S., governs the public procurement of personal property and services. The Florida Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and commodity and contractual services needed to support agency activities.¹ The Division of State Purchasing, in the DMS, establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.²

Contracts for commodities or contractual services in excess of \$35,000 must be procured through a competitive solicitation process.³ Section 287.058, F.S., outlines the provisions and conditions that must be present in contractual agreements for competitively procured services. The section

¹ See ss. 287.032 and 287.042, F.S.

² Division of Purchasing rules are published under Chapter 60A of the Florida Administrative Code.

³ Section 287.057(1), F.S., requires a competitive solicitation process for contracts that exceed the Category Two threshold. Category thresholds are listed in s. 287.017, F.S., which identifies contracts exceeding \$35,000 as Category Two.

also provides that a contract may be renewed for a period of time upon satisfactory performance evaluations by the agency and subject to the availability of funds.⁴

Federal law also regulates procurement activities. The most well-known international agreements are the World Trade Organization Government Procurement Agreement (GPA), the North American Free Trade Agreement (NAFTA), and numerous other bilateral free trade agreements (FTA).⁵ The expansion of international trade between the United States and foreign governments has resulted in many agreements that contain mutually beneficial government procurement obligations. In the spirit of promoting trade relations, governments have agreed to require that each party's goods and services be given the same treatment as domestic goods and services. As such, a government is prohibited from arbitrarily giving preferential treatment to domestic goods at the expense of foreign goods originating from a country where there is an enforceable and standing trade agreement espousing mutually beneficial government obligations.

World Trade Organization Government Procurement Agreement (GPA)

The agreement that established the World Trade Organization (WTO) came as a result of the Uruguay Rounds of Multilateral Trade Negotiations, which also produced a series of other international agreements, including the GPA.⁶ As enumerated in the preamble, the GPA's objective is the expansion of world trade through three primary measures:

- Prohibition on discrimination based on national origin;
- Establishment of clear, transparent laws, regulations, procedures, and practices regarding governmental procurement; and
- Application of competitive procedural requirements related to notification, tendering (bidding), contract award, tender (bid) protest, etc.⁷

With respect to discrimination on the basis of national origin, Article III of the agreement expressly forbids the application of less favorable treatment to the products, services, and suppliers of other foreign parties than that which would be accorded to domestic products, services, and suppliers.⁸ The agreement further provides that all parties will ensure that the laws, regulations, procedures, and practice regulating government procurement in their home state will be executed in a nondiscriminatory manner.⁹

⁴ Section 287.058(h), F.S.

⁵ A list of the federal government's current procurement obligations under international agreements is available at <https://ustr.gov/issue-areas/government-procurement> (last visited Jan. 13, 2016).

⁶ Signatory countries: Armenia, Canada, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia, Bulgaria, Romania, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, and Chinese Taipei.

⁷ 1994 Uruguay Round Agreement on Government Procurement, April 15, 1994, WTO Agreement, Annex 4(b) (hereinafter "GPA"), *and see* GPA Appendix I (United States), Annex 2 (discusses sub-central government entities, such as Florida), both available at https://www.wto.org/english/docs_e/legal_e/legal_e.htm (last visited Jan. 13, 2016).

⁸ *Id.*

⁹ *Id.*

The State of Florida was one of 37 states to agree to procure in accordance with the GPA.¹⁰ Presently, Florida's executive branch is covered under the GPA¹¹ for purchases that exceed \$552,000 for commodities and services and \$7,777,000 for construction services.¹²

Free Trade Agreements

In addition to the GPA, the United States has also entered into several bilateral free trade agreements¹³ and two multilateral free trade agreements,¹⁴ with the most highly recognized being the NAFTA. Similar to the GPA, these agreements contain provisions that call for fair and non-discriminatory treatment of products, goods, and services by all state parties. When necessary, the United States has issued waivers to protect parties from discriminatory purchasing requirements found under existing law that would be contrary to the covenants embodied in such international agreements.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 287.058, F.S., to require state agency contracts for services in excess of \$35,000 to include a provision in the contractual document, stating that any call center services provided pursuant to the contract must be staffed by persons located within the United States.

Section 2 provides that the bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ In a letter dated November 7, 1991, Governor Lawton Chiles authorized coverage of Florida under the GATT/WTO Government Procurement Agreement.

¹¹ See Annex 2 (Sub-Central Government Entities), *supra*, note 7.

¹² 76 F.R. 76808-01, December 8, 2011.

¹³ The United States has entered bilateral free trade agreements with the following countries: Australia, Bahrain, Canada, Chile, Israel, Morocco, Oman, Peru, and Singapore. This information is available at <http://www.ustr.gov/trade-topics/government-procurement/ftas-government-procurement-obligations> (last visited Jan. 13, 2016).

¹⁴ NAFTA (member countries: United States, Mexico, and Canada) and DR-CAFTA (El Salvador, Dominican Republic, Guatemala, Honduras, Nicaragua, and Costa Rica). This information is available at <https://ustr.gov/trade-agreements/free-trade-agreements> (last visited Jan. 13, 2016).

¹⁵ See 19 U.S.C. ss. 2511(a), 2532, 2533; see also Exec. Order No. 12260, available at <http://www.archives.gov/federal-register/codification/executive-order/12260.html> (last visited Jan. 13, 2016).

D. Other Constitutional Issues:

Requiring call-center services provided pursuant to a contract for services to be staffed by persons within the United States may potentially implicate the Supremacy Clause and the Commerce Clause of the United States Constitution.

The Federal Commerce Clause and Market Participant Exception

The Commerce Clause states that Congress shall have the power “to regulate commerce with foreign Nations, and among the several States.”¹⁶ This clause speaks to Congress’ power to regulate both interstate and foreign commerce and acts as a negative constraint upon the states.¹⁷

The standard for determining whether state action violates the Commerce Clause requires courts to consider whether the state law facially discriminates against foreign commerce, whether the law interferes with the ability of the federal government to speak with one voice, or whether the law attempts to regulate conduct beyond its borders. For this reason, state laws affecting interstate and foreign commerce are reviewed with heightened scrutiny.¹⁸

The market participant exception may allow state laws to withstand such judicial review under particular circumstances. The exception permits a state to permissibly discriminate against non-residents so long as the state is acting as a “market participant,” rather than a “market regulator.”¹⁹ A state is considered to be a “market participant” when it is acting as an economic actor, such as a purchaser of goods and services.²⁰

However, the law is unsettled regarding the applicability of the market participant exception to the Commerce Clause. Under the market participant exception, the United States Court of Appeals for the First Circuit upheld the validity of a Pennsylvania procurement statute that required suppliers contracting with a public agency for public works projects to provide products made of American steel.²¹ Conversely, the United States Court of Appeals for the Third Circuit refused to extend the market participant exception and invalidated a Massachusetts law that placed restrictions on the ability of state agencies and authorities to purchase goods or services from individuals or companies that engaged in business with Burma.²²

¹⁶ U.S. Const. Art. I, s. 8, c. 3.

¹⁷ The constraint is often referred to as the dormant Commerce Clause. See *Gibbons v. Ogden*, 22 U.S. 1 (1824).

¹⁸ *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 446 (1970) (“When construing Congress’ power to ‘regulate commerce with foreign Nations,’ a more extensive constitutional inquiry is required.”).

¹⁹ See *White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204, 208 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).

²⁰ *Id.*

²¹ *Trojan Techs., Inc. v. Pennsylvania*, 916 F. 2d 903, 912 (3d Cir. 1990), *cert denied*, 501 U.S. 1212 (1991).

²² *National Foreign Trade Council v. Natsios*, 181 F.3d 38, 60 (1st Cir. 1999), *cert granted*, 528 U.S. 1018 (1999).

The Supremacy Clause

The Supremacy Clause grants Congress the power to preempt state law by deeming the United States Constitution and the laws of the United States as the “Law of the Land.”²³ Preemption may occur under three primary circumstances: when Congress expressly preempts the state legislation, when Congress intends to occupy the field, or when a state law is in conflict with federal law.²⁴

In *Crosby v. National Foreign Trade Council*, the United States Supreme Court unanimously concluded that a Massachusetts’ law prohibiting state agencies from buying goods or services from companies doing business with Burma was unconstitutional.²⁵ At the time, the federal government was reassessing its foreign relations status with Burma and Congress had enacted a statute that imposed a set of mandatory and conditional sanctions on Burma. The existence of both the federal and state law created a direct conflict since the Massachusetts law banned all contracts between the state and companies doing business with Burma.

In 2013, using the formula prescribed under *Crosby*, the United States Court of Appeals for the 11th Circuit upheld a challenge to the constitutionality of an amendment to a provision under ch. 287, F.S.²⁶ The challenged law in *Odebrecht* required a company entering into a procurement contract for goods or services exceeding \$1 million to certify that it did not have business operations in Cuba.²⁷ The Court held that federal law preempted the state law under the circumstances because the state law swept more broadly than federal legislation.²⁸

Similarly, SB 864 may implicate foreign relations by requiring that state agency contracts in excess of \$35,000 include a provision that all call-center services must be staffed by persons located within the United States. Notably different from the courts’ reasoning in *Crosby* and *Odebrecht*, is that the language of this bill does not appear to be in direct conflict with any federal law. However, federal treaties and executive agreements supporting free trade may still provide a basis for preemption.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 864 could limit the number of private companies qualified to enter into procurement contracts with the state. The DMS, in an agency analysis for a similar bill, stated that

²³ U.S. Const. art. VI, s. 1, c.2.

²⁴ *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000).

²⁵ *Id.* at 366.

²⁶ *Odebrecht Constr. v. Sec’y, Fla. DOT*, 715 F.3d 1268 (11th Cir. 2013).

²⁷ Section 287.135(5), F.S. (2012). *See also Odebrecht*, 715 F.3d at 1272.

²⁸ *Id.* at 1281.

while the bill may create more American jobs, “large corporations providing worldwide call-center services could have substantial costs associated with requiring these corporations to alter their business models and provide these services within the United States.”²⁹

C. Government Sector Impact:

This bill may result in the creation of American jobs due to the requirement that contractors and subcontractors staff call-centers with persons located within the United States.³⁰ However, this requirement could have fiscal implications, which are unknown, if the cost of domestic labor is higher than the cost of labor in foreign markets.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.058 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²⁹ See *Department of Management Services Senate Bill Analysis for SB 90* (December 10, 2012), (on file with Senate Appropriations Subcommittee on General Government) on page 2.

³⁰ *Id.*

By Senator Smith

31-00934-16

2016864__

1 A bill to be entitled
2 An act relating to state contracts; amending s.
3 287.058, F.S.; requiring all state contracts in excess
4 of a certain amount to require that call-center
5 services be staffed by persons located within the
6 United States; providing an effective date.

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

9
10 Section 1. Subsection (1) of section 287.058, Florida
11 Statutes, is amended to read:

12 287.058 Contract document.—

13 (1) A ~~Every~~ procurement of contractual services in excess
14 of the threshold amount provided under ~~in~~ s. 287.017 for
15 CATEGORY TWO, except for ~~the providing of~~ health and mental
16 health services or drugs in the examination, diagnosis, or
17 treatment of sick or injured state employees or ~~the providing of~~
18 other benefits as required by chapter 440, must ~~shall~~ be
19 evidenced by a written agreement embodying all provisions and
20 conditions for ~~of~~ the procurement of such services. As
21 applicable, the agreement must, ~~which shall, where applicable,~~
22 include, but need not be limited to, a provision:

23 (a) Requiring that bills for fees or other compensation for
24 services or expenses be submitted in detail sufficient for a
25 proper preaudit and postaudit ~~thereof~~.

26 (b) Requiring that bills for any travel expenses be
27 submitted in accordance with s. 112.061. A state agency may
28 establish rates lower than the maximum provided in s. 112.061.

29 (c) Requiring all call-center services provided pursuant to

31-00934-16

2016864__

30 the contract to be staffed by persons located within the United
31 States. This requirement also applies to all call-center
32 services performed by a subcontractor pursuant to the contract.

33 ~~(d)(e)~~ Allowing unilateral cancellation by the agency for
34 refusal by the contractor to allow public access to all
35 documents, papers, letters, or other material made or received
36 by the contractor in conjunction with the contract, unless the
37 records are exempt from s. 24(a) of Art. I of the State
38 Constitution and s. 119.07(1).

39 ~~(e)(d)~~ Specifying a scope of work which ~~that~~ clearly
40 establishes all tasks the contractor is required to perform.

41 ~~(f)(e)~~ Dividing the contract into quantifiable, measurable,
42 and verifiable units of deliverables which ~~that~~ must be received
43 and accepted in writing by the contract manager before payment.
44 Each deliverable must be directly related to the scope of work
45 and specify a performance measure. As used in this paragraph,
46 the term "performance measure" means the required minimum
47 acceptable level of service to be performed and criteria for
48 evaluating the successful completion of each deliverable.

49 ~~(g)(f)~~ Specifying the criteria and the final date by which
50 such criteria must be met for completion of the contract.

51 ~~(h)(g)~~ Specifying that the contract may be renewed for up
52 ~~to a period that may not exceed~~ 3 years or the term of the
53 original contract, whichever is longer, specifying the renewal
54 price for the contractual service as set forth in the bid,
55 proposal, or reply, specifying that costs for the renewal may
56 not be charged, and specifying that renewals are contingent upon
57 satisfactory performance evaluations by the agency and subject
58 to the availability of funds. Exceptional purchase contracts

31-00934-16

2016864__

59 pursuant to s. 287.057(3)(a) and (c) may not be renewed.

60 ~~(i)-(h)~~ Specifying the financial consequences that the
61 agency must apply if the contractor fails to perform in
62 accordance with the contract.

63 ~~(j)-(i)~~ Addressing the property rights of any intellectual
64 property related to the contract and the specific rights of the
65 state regarding the intellectual property if the contractor
66 fails to provide the services or is no longer providing
67 services.

68
69 In lieu of a written agreement, the agency may authorize the use
70 of a purchase order for classes of contractual services if the
71 provisions of paragraphs (a)-(j) ~~(a)-(i)~~ are included in the
72 purchase order or solicitation. The purchase order must include,
73 but need not be limited to, an adequate description of the
74 services, the contract period, and the method of payment. In
75 lieu of printing the provisions of paragraphs (a)-(d) ~~(a)-(e)~~
76 and (h) ~~(g)~~ in the contract document or purchase order, agencies
77 may incorporate the requirements of those paragraphs ~~(a)-(e)~~ and
78 ~~(g)~~ by reference.

79 Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

SB864

Bill Number (if applicable)

Topic State Contracts

Amendment Barcode (if applicable)

Name Roger Simmermaker

Job Title Author/Speaker/Publisher

Address 13112 Aronomink Lane

Phone 888-45-OWNED

Street

Orlando

City

FL

State

32828

Zip

Email roger@howtobuyamerican.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Consumer Patriotism Corp.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

864

Bill Number (if applicable)

Topic STATE CONTRACTS

Amendment Barcode (if applicable)

Name JAMES TAYLOR

Job Title EXECUTIVE DIRECTOR

Address _____

Phone 407 718-2786

Street

City

TALLAHASSEE

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA TECHNOLOGY COUNCIL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/10/16
Meeting Date

864
Bill Number (if applicable)

Topic TAX DOLLARS

Amendment Barcode (if applicable)

Name GAIL MARIE PERRY

Job Title CHAIR

Address PO BOX 1766

Phone 954 850 4653

Street

POMPANO BEACH FL 33061

City

State

Zip

Email workingjpb@hotmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing COMMUNICATIONS WORKERS of AMERICA COVENANT of FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

Meeting Date

SB 0864

Bill Number (if applicable)

Topic State Contracts

Amendment Barcode (if applicable)

Name David E. Singer

Job Title Citizen/Voter

Address 17326 133rd Trail N.

Phone 561-601-1225

Street

Jupiter

City

FL

State

33478

Zip

Email 2ds@bellsouth.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-2016

Meeting Date

SB 864

Bill Number (if applicable)

Topic STATE CONTRACT

Amendment Barcode (if applicable)

Name FRANK ANGEL

Job Title _____

Address 2180 VIA EDEN

Street

Phone 708-955-6254

BOCA RATON FL. 33433

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

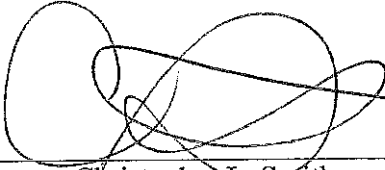
To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: February 1, 2016

I respectfully request that **Senate Bill #864**, relating to State Contracts, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



Senator Christopher L. Smith
Florida Senate, District 31

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: CS/SB 912

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Fraudulent Activities Associated with Payment Systems

DATE: February 10, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 912 addresses fraudulent activity occurring at fuel stations by:

- Increasing from a third degree felony to a second degree felony the penalty for the unlawful conveyance of fuel;
- Requiring a retail petroleum fuel measuring device to have affixed to or installed onto the measuring device at least one security measure;
- Authorizing the Department of Agriculture and Consumer Services (DACS) to prohibit further use of the measuring device until a security measure is installed, replaced, or repaired;
- Punishing the attempt to traffic in or trafficking in five, rather than 10, counterfeit credit cards as a second degree felony;
- Indicating that possession of counterfeit cards is unlawful; and
- Increasing the offense severity level ranking for unlawful conveyance of fuel and trafficking in or possession of counterfeit credit cards.

The bill has an insignificant fiscal impact on state funds. On January 5, 2016, the Criminal Justice Impact Conference determined that the bill will have a positive insignificant impact on state prison beds which means that the bill will require ten or fewer additional prison beds.

The bill provides an effective date of October 1, 2016.

II. Present Situation:

Fraudulent Activity Occurring at Fuel Stations

The Department of Agriculture and Consumer Services (DACS) states:

The DACS is responsible for conducting inspections of the petroleum distribution system and analyzing samples of petroleum products to ensure consumers are being offered quality products at a fair measure. In fulfilling this responsibility, the DACS inspects pumps for devices that steal credit card information from unknowing consumers—commonly called “skimmers.”

Current law does not require security measures to be in place to reduce the possibility of placing skimmers into pumps or alerting the consumer that a pump has been opened. The consumer is victimized by credit card theft, while the retailer is victimized by fraudulent fuel purchases. Through elaborate schemes to defraud, a consumers’ information obtained by a skimmer is often used to purchase gasoline fraudulently and subsequently sold on the black market. In some cases, gas stations are losing thousands of dollars a day in the theft of fuel by use of counterfeit/compromised credit cards.

Penalties presently for the theft of fuel depend on the amount stolen as with any other product.¹

Unlawful Conveyance of Fuel

Section 316.80(1), F.S., provides that it is unlawful for any person to maintain, or possess any conveyance or vehicle that is equipped with, fuel tanks, bladders, drums, or other containers that do not conform to 49 C.F.R. or have not been approved by the United States Department of Transportation for the purpose of hauling, transporting, or conveying motor or diesel fuel over any public highway.

Section 316.80(2), F.S., provides that any person who violates subsection (1) commits a third degree felony, if he or she has attempted to or has fraudulently obtained motor or diesel fuel by:

- Presenting a credit card or a credit card account number in violation of ss. 817.57-817.685, F.S.;²
- Using unauthorized access to any computer network in violation of s. 815.06, F.S.; or
- Using a fraudulently scanned or lost or stolen payment access device, whether credit card or contactless device.

¹ Analysis of SB 912 (November 24, 2015), Florida Department of Agriculture and Consumer Services (on file with the Senate Committee on Criminal Justice).

² A number of payment card offenses are included in the referenced statutes, including use of a scanning device or reencoder to access and store information on the payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user’s card, or a merchant. Section 817.625, F.S.

The described offense is not currently ranked in the offense severity level ranking chart in s. 931.0022, F.S. A third degree felony that is not ranked in the chart is ranked as a Level 1 offense pursuant to the “default” provisions of s. 921.0023, F.S.

Trafficking In or Possession of Counterfeit Cards

Section 817.611, F.S., provides that it is a second degree felony for a person to traffic in or attempt to traffic in 10 or more counterfeit credit cards, invoices, vouchers, sales drafts, or other representations or manifestations of counterfeit credit cards, or credit card account numbers of another in any six-month period. Relevant to the bill, this offense does not specifically state that *possession* of counterfeit credit cards is unlawful.

The described offense is not currently ranked in the offense severity level ranking chart in s. 931.0022, F.S. A second degree felony that is not ranked in the chart is ranked as a Level 4 offense pursuant to the “default” provisions of s. 921.0023, F.S.

III. Effect of Proposed Changes:

CS/SB 912 addresses fraudulent activity occurring at fuel stations in the following manner:

- Amends s. 316.80(2), F.S., to increase the felony degree for unlawful conveyance of fuel from a third degree felony (maximum penalty of five years in state prison)³ to a second degree felony (maximum penalty of 15 years in state prison).⁴
- Amends s. 921.0022, F.S., to rank the offense of unlawful conveyance of fuel in Level 5 of the offense severity level ranking chart. Currently, this offense is ranked in Level 1. An offender with a Level 1 primary offense would likely score a nonstate prison sanction as the lowest permissible sentence absent significant prior convictions. The possibility of a defendant receiving a prison sentence is greater if the offense is in Level 5 than Level 1. A Level 5 offense is considered to be more serious than a Level 1 offense and accrues more sentence points. A defendant with a Level 5 offense would score a lowest permissible sentence within the sentencing range in which a court may impose a prison sentence.
- Amends s. 525.07, F.S., (powers and duties of the DACS) to:
 - Require each person who owns or manages a retail petroleum fuel measuring device to have affixed to or installed onto the measuring device at least one listed security measure to restrict the unauthorized access of customer payment card information;
 - Specify security measures;⁵
 - Specify that the owner of a measuring device with a security measure or with an altered or damaged security measure, upon written notice of noncompliance from the DACS, has five calendar days to comply with security measure requirements;
 - Provide that after the fifth day of noncompliance, the DACS may prohibit further use of the measuring device until a security measure is installed, replaced, or repaired and that a

³ Section 775.082, F.S.

⁴ *Id.*

⁵ Security measures include: placement of a pressure-sensitive security tape over the panel opening that leads to the scanning device for the measuring device in a manner that will restrict the unauthorized opening of the panel; a device or system that will render the measuring device or scanning device in the measuring device inoperable if there is an unauthorized opening of the panel; a device or system that encrypts the customer payment card information in the scanning device; or another security measure approved by the FDACS.

- repeat violation found on the same device will be cause for the DACS to immediately take the device out of service;
 - Specify that the terms “scanning device” and “payment card” have the same meanings as defined in s. 817.625, F.S.;⁶ and
 - Provide that this provision only applies to retail petroleum fuel measuring devices that have a scanning device.
- Amends s. 817.611, F.S, which currently punishes trafficking in 10 or more counterfeit credit cards, etc., to reduce the number of cards from 10 to five, and specify that this offense also includes possession, which is not currently specifically included in the offense.

The bill does not change the felony degree of trafficking in or possession of counterfeit cards (second degree felony) but does amend s. 921.0022, F.S., to rank this offense in Level 5 of the offense severity level ranking chart. Currently, this offense is a Level 4 offense. The possibility of a defendant receiving a prison sentence is greater if the offense is in Level 5 than Level 4. A Level 5 offense accrues more sentence points than a Level 4 offense. A defendant with a Level 5 offense is more likely to score a lowest permissible sentence that is within the sentencing range in which a court may impose a prison sentence.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 912 may have a fiscal impact on owners or managers of retail petroleum fuel measuring devices due to the requirements for the installation of one or more security measures on such devices.

⁶ “Scanning device” means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card. Section 817.625(1)(a), F.S. “Payment card” means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant. Section 817.625(1)(c), F.S.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact of legislation, estimated that the original bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds). Changes to the original bill incorporated in CS/SB 912 do not impact that estimate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.80, 525.07, 817.611, and 921.0022.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on January 25, 2016:**

- Requiring that each person who owns or manages a retail petroleum fuel measuring device have affixed to or installed onto the measuring device a security measure to restrict the unauthorized access of customer payment card information;
- Providing that the security measure must include one or more specified security measures;
- Providing that the owner or manager of a retail petroleum fuel measuring device without a security measure or with an altered or damaged security measure, upon written notice from the department of such noncompliance, shall have five calendar days to comply; and
- Providing that after the fifth day of noncompliance, the department may prohibit further use of the retail petroleum fuel measuring device until a security measure is installed, replaced, or repaired.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Flores

591-02542-16

2016912c1

1 A bill to be entitled
 2 An act relating to fraudulent activities associated
 3 with payment systems; amending s. 316.80, F.S.;
 4 revising the felony classification for unlawful
 5 conveyance of fuel; amending s. 525.07, F.S.;
 6 specifying requirements for managers of petroleum fuel
 7 measuring devices with respect to accurate
 8 measurement; requiring retail petroleum fuel measuring
 9 devices fitted with scanning devices to have certain
 10 security measures; providing requirements for such
 11 measures; requiring the owner or operator of a device
 12 to have certain security measures in place within a
 13 specified timeframe upon notice from the Department of
 14 Agriculture and Consumer Services; authorizing the
 15 department, under certain circumstances, to prohibit
 16 use of or to remove from service such devices that are
 17 noncompliant; defining terms; providing applicability;
 18 requiring the Department of Agriculture and Consumer
 19 Services to enforce provisions; providing for
 20 rulemaking; amending s. 817.611, F.S.; reducing the
 21 number of counterfeit credit cards that a person can
 22 be in possession of to qualify as unlawful; amending
 23 s. 921.0022, F.S.; ranking unlawful conveyance or
 24 fraudulent acquisition of fuel as a level 5 offense;
 25 ranking trafficking in or possession of counterfeit
 26 credit cards as a level 5 offense; providing an
 27 effective date.

28
 29 Be It Enacted by the Legislature of the State of Florida:

30
 31 Section 1. Subsection (2) of section 316.80, Florida
 32 Statutes, is amended to read:

Page 1 of 15

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591-02542-16

2016912c1

33 316.80 Unlawful conveyance of fuel; obtaining fuel
 34 fraudulently.-
 35 (2) A ~~Any~~ person who violates subsection (1) commits a
 36 felony of the second ~~third~~ degree, punishable as provided in s.
 37 775.082, s. 775.083, or s. 775.084, if he or she has attempted
 38 to or has fraudulently obtained motor or diesel fuel by:
 39 (a) Presenting a credit card or a credit card account
 40 number in violation of ss. 817.57-817.685;
 41 (b) Using unauthorized access to any computer network in
 42 violation of s. 815.06; or
 43 (c) Using a fraudulently scanned or lost or stolen payment
 44 access device, whether credit card or contactless device.
 45 Section 2. Subsections (3) and (4) of section 525.07,
 46 Florida Statutes, are amended, and subsection (10) is added to
 47 that section, to read:
 48 525.07 Powers and duties of department; inspections;
 49 unlawful acts.-
 50 (3) Each person who owns or manages ~~All persons who own or~~
 51 ~~operate~~ a petroleum fuel measuring device shall be responsible
 52 for ensuring accurate measure by the device within the
 53 tolerances defined by the rule. An appropriate security seal
 54 shall be placed on all measuring devices found to be giving
 55 accurate measure within the tolerances defined by the department
 56 in such a way that the metering adjustment cannot be changed
 57 without breaking the seal.
 58 (4) A ~~Any~~ measuring device that is found to be operating
 59 outside the tolerances defined by the department shall be deemed
 60 inaccurate and the department, at its discretion, shall either:
 61 (a) Give, in writing, the ~~operator or~~ owner or manager of

Page 2 of 15

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62 the measuring device a reasonable time to repair the measuring
63 device; or

64 (b) Condemn or prohibit the further use of the measuring
65 device by using an appropriate security seal to obstruct the
66 mechanism so that it cannot be operated without breaking the
67 seal. The measuring device shall not be operated in this state
68 again without the written consent of the department.

69 (10) (a) Each person who owns or manages a retail petroleum
70 fuel measuring device shall have affixed to or installed onto
71 the measuring device a security measure to restrict the
72 unauthorized access of customer payment card information. The
73 security measure must include one or more of the following:

74 1. The placement of pressure-sensitive security tape over
75 the panel opening that leads to the scanning device for the
76 retail petroleum fuel measuring device in a manner that will
77 restrict the unauthorized opening of the panel.

78 2. A device or system that will render the retail petroleum
79 fuel measuring device or the scanning device in the measuring
80 device inoperable if there is an unauthorized opening of the
81 panel.

82 3. A device or system that encrypts the customer payment
83 card information in the scanning device.

84 4. Another security measure approved by the department.

85 (b) The owner or manager of a retail petroleum fuel
86 measuring device without a security measure or with an altered
87 or damaged security measure, upon written notice from the
88 department of such noncompliance, shall have 5 calendar days to
89 comply with this subsection. After the fifth day of
90 noncompliance, the department may prohibit further use of the

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2016912c1

91 retail petroleum fuel measuring device until a security measure
92 is installed, replaced, or repaired. A repeat violation found on
93 the same retail petroleum fuel measuring device will be cause
94 for the department to immediately take the measuring device out
95 of service.

96 (c) For purposes of this subsection, the terms "scanning
97 device" and "payment card" have the same meanings as defined in
98 s. 817.625.

99 (d) This subsection applies only to retail petroleum fuel
100 measuring devices that have a scanning device.

101 Section 3. Section 817.611, Florida Statutes, is amended to
102 read:

103 817.611 Traffic in or possess counterfeit credit cards.—Any
104 person who traffics in, ~~or~~ attempts to traffic in, or possesses
105 5 ~~10~~ or more counterfeit credit cards, invoices, vouchers, sales
106 drafts, or other representations or manifestations of
107 counterfeit credit cards, or credit card account numbers of
108 another in any 6-month period is guilty of a felony of the
109 second degree, punishable as provided in s. 775.082, s. 775.083,
110 or s. 775.084.

111 Section 4. Paragraph (e) of subsection (3) of section
112 921.0022, Florida Statutes, is amended to read:

113 921.0022 Criminal Punishment Code; offense severity ranking
114 chart.—

115 (3) OFFENSE SEVERITY RANKING CHART

116 (e) LEVEL 5

117
Florida Statute Felony Degree Description

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118	591-02542-16	2016912c1	
119	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
120	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
121	<u>316.80(2)</u>	<u>2nd</u>	<u>Unlawful conveyance; obtaining fuel fraudulently.</u>
122	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
123	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
124	379.367(4)	3rd	Willful molestation of a commercial harvester's

127	591-02542-16	2016912c1	spiny lobster trap, line, or buoy.
128	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
129	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
130	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
131	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
131	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation

	591-02542-16		2016912c1
			premiums.
132	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
133	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
134	790.01(2)	3rd	Carrying a concealed firearm.
135	790.162	2nd	Threat to throw or discharge destructive device.
136	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
137	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
138	790.23	2nd	Felons in possession of

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			firearms, ammunition, or electronic weapons or devices.
139	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
140	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
141	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
142	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
143	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
144	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.

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145	591-02542-16		2016912c1
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
146	812.131(2)(b)	3rd	Robbery by sudden snatching.
147	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
148	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
149	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
150	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
151			
152			

	591-02542-16		2016912c1
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
153	<u>817.611</u>	<u>2nd</u>	<u>Traffic in or possess counterfeit credit cards.</u>
154			
155	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
156	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
157	827.071(4)	2nd	Possess with intent to

	591-02542-16		2016912c1	
			promote any photographic material, motion picture, etc., which includes sexual conduct by a child.	
158	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.	
159	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.	
160	843.01	3rd	Resist officer with violence to person; resist arrest with violence.	
161	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.	
162				

	591-02542-16		2016912c1	
	847.0137	3rd	Transmission of pornography by electronic device or equipment.	
	(2) & (3)			
163	847.0138	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.	
	(2) & (3)			
164	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.	
165	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.	
166	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).	
167	893.13(1)(c)2.	2nd	Sell, manufacture, or	

591-02542-16

2016912c1

deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

168

893.13(1)(d)1.

1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.

169

893.13(1)(e)2.

2nd

Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,

591-02542-16

2016912c1

(2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

170

893.13(1)(f)1.

1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.

171

893.13(4)(b)

2nd

Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

172

893.1351(1)

3rd

Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

591-02542-16

2016912c1

173
174
175

Section 5. This act shall take effect October 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/11/2016
Meeting Date

912
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Antonio Davis

Job Title Veteran

Address 2313 NW 10th Court

Phone _____

Street

Ft Lauderdale FL

City

State

33311

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14

Meeting Date

912

Bill Number (if applicable)

Topic Gas Pump Skimmers

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP Government Affairs

Address 227 S Adams St.

Phone 850-570-0269

Street

Tallahassee

FL

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14
Meeting Date

SB 0912
Bill Number (if applicable)

Topic: Fraudulent Activities Assoc w/payment sys

Amendment Barcode (if applicable)

Name DON HEATON

Job Title Lieutenant

Address 123 W. Indiana Ave

Phone 386-804-6825

Street

DeLand, FL

Email dheaton@vcs0.us

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Volusia County Sheriff's Office / Florida Sheriff's Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16
Meeting Date

SB 912
Bill Number (if applicable)

Topic Fraudulent Activities Associated w/ Payment Systems

Amendment Barcode (if applicable)

Name JARED ROSS

Job Title SVP GOVERNMENTAL AFFAIRS

Address 3692 Coolidge Ct
Street

Phone (850) 322-6956

Tallahassee FL 32311
City State Zip

Email jared.ross@slw.coop

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA CREDIT UNION ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16
Meeting Date

SB 912
Bill Number (if applicable)

Topic Fraudulent Activities Associated with Payment Systems

Amendment Barcode (if applicable)

Name Jonathon Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Phone (850) 617-7700

Street

Tallahassee

FL

32399

Email Jonathon.Rees@

City

State

Zip

freshfromflorida.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

Meeting Date

SB 912

Bill Number (if applicable)

Topic Fraudulent Activities Associated with Payment Systems Amendment Barcode (if applicable)

Name Bernadette Howard

Job Title Government Affairs Committee

Address 2636 Mitcham Drive

Street

Phone 850-219-3631

Tallahassee FL 32308

City

State

Zip

Email bhoward@fpca.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing The Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SB 912

Bill Number (if applicable)

Topic Fraudulent Activities Related to Payment Systems

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32312

Email bbevis@aif.com

City

State

Zip

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against (The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: PCS/SB 922 (622386)

INTRODUCER: Appropriations Subcommittee on General Government and Senator Montford

SUBJECT: Solid Waste Management

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	Favorable
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 922:

- Establishes a waste tire abatement program and provides for funding of the program;
- Deletes the waste tire grant program and authorizes the small county consolidated grant program to provide grants for waste tire abatement;
- Amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000;
- Recreates and modifies provisions related to the solid waste landfill closure account;
- Provides authority to the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient;
- Expands the authority of the DEP to provide funding for the closure and long-term care of solid waste management facilities;
- Expands the types of financial assurances permittees may provide for closure and long-term care of solid waste management facilities; and
- Authorizes funds to be used for closure and long-term care of waste management facilities that are not required to have an operating permit.

The bill authorizes the DEP to use funds from the Solid Waste Management Trust Fund to pay for costs not covered by insurance policies or alternative forms of financial assurances. These costs could have a significant fiscal impact to the Solid Waste Management Trust Fund.

Except as otherwise expressly provided in this act, this act takes effect on July 1, 2016.

II. Present Situation:

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering;¹ waste tire fees;² and oil related fees, fines and penalties.³ The Department of Environmental Protection (DEP) must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.⁴

Landfill Closure

Pursuant to section 403.704, F.S., the DEP is responsible for implementing and enforcing the state solid waste management program, which provides the guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Florida Administrative Code Chapters 62-701 to 62-722, establish standards for the construction, operation, and closure of solid waste management facilities and provisions governing other aspects of Florida's solid waste management program. Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. Closure plans include:

- A design plan;
- A closure operation plan;
- A long-term care plan; and
- Proof of financial assurance, which may include closure insurance, for long-term care and a cost estimate for closure pursuant to Florida Administrative Code Rule 62-701.630.

Section 403.7125, F.S., provides that the owner or operator of a landfill is responsible for the closure of the landfill and is liable for its improper closure. The owner or operator of a federal,

¹ Section 403.413(6)(a), F.S.

² Section 403.718(2), F.S.

³ Section 403.759, F.S.

⁴ Section 403.709(1), F.S.

state, or local government owned landfill is required to establish a fee to ensure the financial resources are available for the closure of the landfill.

Prior to receiving a permit to operate a landfill or construction and demolition debris disposal facility, the owner or operator of the facility must provide financial assurance to assure the availability of financial resources to properly close and provide long-term care of the landfill.⁵ To establish the amount of financial assurance, the owner must estimate the cost of closure and long-term maintenance as part of a landfill permit application.⁶ The owner must update the cost estimate annually.⁷ Allowable financial mechanisms include irrevocable letters of credit, financial guarantee bonds, performance bonds, financial tests, corporate guarantee, trust fund agreements, and insurance certificates.⁸ Government entities that operate a landfill may also use a landfill management escrow account as a financial assurance instrument.⁹

Operators of solid waste disposal units must receive a closure permit to close a landfill.¹⁰ Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.¹¹

These facilities must also perform long-term care for 30 years.¹² This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.¹³

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by the DEP; and
- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

⁵ Fla. Admin. Code R. 62-701.630(2).

⁶ Fla. Admin. Code R. 62-701.630(3).

⁷ Fla. Admin. Code R. 62-701.630(4).

⁸ Fla. Admin. Code R. 62-701.630(2)(b)2.

⁹ Fla. Admin. Code R. 62-701.630(2)(b)1.

¹⁰ Fla. Admin. Code R. 62-701.600(2).

¹¹ Fla. Admin. Code R. 62-701.600(3)(f)2..

¹² Fla. Admin. Code R. 62-701.620(1)

¹³ *Id.*

The closure account was created within the 2015 implementing bill, SB 2502-A, and is set to expire July 1, 2016.¹⁴

The DEP is currently using this authority and funds from the SWMTF landfill closure account to enter into contracts with a third party for closure construction and related environmental services to close facilities where an insurance policy was used to provide financial assurance.¹⁵ Funds are being used to enter into contracts for closure activities and then receive reimbursement funds from insurers, up to the limits of coverage under the insurance. Landfills being addressed in this manner are:

- Williams Road (Hillsborough County);
- Coyote Navarre (Santa Rosa County);
- Coyote East (Walton County);
- Coyote West (Walton County); and
- Cerny Road (Escambia County).¹⁶

Waste Tire Abatement

The solid waste management grant program receives up to 37 percent of the funds deposited into the SWMTF. Up to 50 percent of the funds are for a consolidated grant program for small counties with populations fewer than 100,000, and grants are distributed to eligible counties equally. Programs supported by the consolidated grant program include:

- General solid waste management;
- Litter prevention and control; and
- Recycling and education programs.¹⁷

Section 403.7095(2), F.S., also directs the DEP to develop a waste tire grant program within the solid waste management grant program funded by up to 50 percent of the funds distributed from the SWMTF to make grants available to all counties. At least 25 percent of the funds are distributed equally to each county with a population fewer than 100,000. The remaining funds are distributed to counties with populations greater than 100,000 and are distributed on the basis of population.¹⁸ Grants may be used for activities such as:

- Construction of waste tire processing facilities;
- Operation of waste tire processing facilities;
- Contracting for waste tire facility service;
- Equipment for waste tire processing facilities;
- Removal of waste tires;
- Purchasing materials made from waste tires;
- Research to facilitate waste tire recycling;
- Establishing waste tire collection centers;
- Incentives for establishing private waste tire collection centers; and

¹⁴ Ch. 2015-222, s. 53, Laws of Fla.

¹⁵ DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁶ *Id.*

¹⁷ Section 403.7095(1), F.S.

¹⁸ Section 403.7095(2), F.S.

- Performing or contracting for enforcement activities.¹⁹

According to the DEP, funding for waste tire grants for all counties was last appropriated during the 2003 legislative session.²⁰ Funding for DEP's waste tire abatement program, which provides for identification, evaluation, and cleanup of waste tire sites,²¹ has not received funds since 2009.²² The DEP has identified more than 440,000 tires located at 26 sites in Florida.²³ The number of tires at these sites range from 1,500 to over 250,000. Preliminary abatement cost estimates per site range from \$2,704 to \$570,900. The DEP's preliminary abatement cost estimate for all 26 sites is \$961,390.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 403.709, F.S., to allow up to five percent of the 37 percent of funds from the SWMTF designated for the solid waste management grant program to be used for a waste tire abatement program.

The bill revises the solid waste landfill closure account to authorize the Department of Environmental Protection (DEP) to provide funding for the closing and long-term care of a solid waste management facility. If the DEP contracts with a third party, the bill expands the DEP's authority by:

- Authorizing the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if the facility was not required to obtain a permit to operate from the DEP. This serves to increase the number of facilities that the DEP may provide funding for cleanup.
- Allowing the DEP to use funds from the solid waste landfill closure account when the permittee provided an acceptable alternative form of sufficiently documented financial assurance, for closing and long-term care of a solid waste management facility. This would also increase the number of facilities that the DEP may provide funding for cleanup.

The bill provides that funds received from other parties, rather than just an insurer, for reimbursing the costs of closing or long-term care of a facility are to be deposited in the solid waste landfill closure account.

The bill provides that if the funds available under an insurance policy or an alternative form of financial assurance are insufficient or otherwise unavailable to perform or complete the closing or long-term care of a facility, the DEP may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the

¹⁹ DEP, *Solid Waste Tire Grant Application*, (Dec. 17, 2013) available at http://www.dep.state.fl.us/waste/quick_topics/forms/documents/62-716/716_3.pdf, Incorporated by reference in Fla. Admin. Code R. 62-716.600.

²⁰ DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

²¹ DEP, *Tires General Information* (Jul. 8, 2015) available at <http://www.dep.state.fl.us/waste/categories/tires/pages/info.htm> (last visited Jan. 16, 2016).

²² DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

²³ *Id.*

²⁴ *Id.*

approved facility closure or long-term care activities. This will expand the circumstances under which the DEP may expend funds for closure and long-term care.

Section 2 amends s. 403.7095, F.S., effective upon becoming law, to remove provisions establishing the waste tire grant program.

The bill expands the allowable uses of funds from the small county consolidated grant program by adding waste tire abatement to the list of programs that may be supported by the grant program.

The bill amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000.

The bill removes an obsolete provision that expired July 1, 2015, directing the DEP to award \$3,000,000 in grants equally to counties with populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs.

Sections 3 and 4 reenact ss. 403.413 and 403.7032, F.S., due to changes made by the bill.

Section 5 Except as otherwise expressly provided in this act, this act takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

PCS/SB 922 may provide a positive fiscal impact for small counties with a waste tire abatement program.

The bill authorizes the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for facility closures or long-term care activities that are not covered from insurance policies or alternative forms of financial assurance. This could have a negative, indeterminate fiscal impact on the Solid Waste Management Trust Fund.

The DEP does not currently have any budget authority to pay for solid waste closure activities; however, the DEP requested \$1 million in their Legislative Budget Request. SB 2500, the Senate proposed 2016-2017 General Appropriations Bill, includes \$1 million for this purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.709 and 403.7095.

The bill reenacts the following sections of the Florida Statutes: 403.413 and 403.7032.

IX. Additional Information:

A. Committee Substitute –Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on General Government on February 11, 2016:

The CS provides authority to the Department of Environmental Protection to use funds from the Solid Waste Management Trust Fund, instead of the solid waste landfill closure account, to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient.

The CS makes amendments to s. 403.7095, F.S., effective upon becoming law and amends the eligibility for grant funding to small counties with populations fewer than 110,000 instead of counties with populations fewer than 100,000.

The CS changes the effective date of the bill from July 1, 2016, to except as otherwise expressly provided in the act, the act takes effect on July 1, 2016.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



891642

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Dean)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 77 - 185

and insert:

otherwise unavailable, to perform or complete the facility
closing or long-term care under this subsection, and the
department has used all such funds from the insurance policy or
alternative form of financial assurance, the department may use
funds from the Solid Waste Management Trust Fund to pay for or
reimburse additional expenses needed for performing or



891642

11 completing the approved facility closure or long-term care
12 activities.

13 ~~(5)(a) Notwithstanding subsection (1), a solid waste~~
14 ~~landfill closure account is established within the Solid Waste~~
15 ~~Management Trust Fund to provide funding for the closing and~~
16 ~~long-term care of solid waste management facilities. The~~
17 ~~department may use funds from the account to contract with a~~
18 ~~third party for the closing and long-term care of a solid waste~~
19 ~~management facility if:~~

20 ~~1. The facility has or had a department permit to operate~~
21 ~~the facility;~~

22 ~~2. The permittee provided proof of financial assurance for~~
23 ~~closure in the form of an insurance certificate;~~

24 ~~3. The facility is deemed to be abandoned or was ordered to~~
25 ~~close by the department;~~

26 ~~4. Closure is accomplished in substantial accordance with a~~
27 ~~closure plan approved by the department; and~~

28 ~~5. The department has written documentation that the~~
29 ~~insurance company issuing the closure insurance policy will~~
30 ~~provide or reimburse the funds required to complete closing and~~
31 ~~long-term care of the facility.~~

32 ~~(b) The department shall deposit the funds received from~~
33 ~~the insurance company as reimbursement for the costs of closing~~
34 ~~or long-term care of the facility into the solid waste landfill~~
35 ~~closure account.~~

36 ~~(c) This subsection expires July 1, 2016.~~

37 Section 2. Effective upon becoming a law, section 403.7095,
38 Florida Statutes, is amended to read:

39 403.7095 Solid waste management grant program.—



891642

40 (1) The department shall develop a consolidated grant
41 program for small counties having populations fewer than
42 100,000, with grants to be distributed equally among eligible
43 counties. Programs to be supported with the small-county
44 consolidated grants include those for the purpose of general
45 solid waste management, litter prevention and control, waste
46 tire abatement, and recycling and education programs.

47 ~~(2) The department shall develop a waste tire grant program~~
48 ~~making grants available to all counties. The department shall~~
49 ~~ensure that at least 25 percent of the funding available for~~
50 ~~waste tire grants is distributed equally to each county having a~~
51 ~~population fewer than 100,000. Of the remaining funds~~
52 ~~distributed to counties having a population of 100,000 or~~
53 ~~greater, the department shall distribute those funds on the~~
54 ~~basis of population.~~

55 ~~(3) From the funds made available pursuant to s.~~
56 ~~403.709(1)(c) for the grant program created by this section, the~~
57 ~~following distributions shall be made:~~

58 ~~(a) Up to 50 percent for the program described in~~
59 ~~subsection (1); and~~

60 ~~(b) Up to 50 percent for the program described in~~
61 ~~subsection (2).~~

62 (2)(4) The department may adopt rules necessary to
63 administer this section, including, but not limited to, rules
64 governing timeframes for submitting grant applications, criteria
65 for prioritizing, matching criteria, maximum grant amounts, and
66 allocation of appropriated funds based upon project and
67 applicant size.

68 ~~(5) Notwithstanding any other provision of this section,~~



891642

69 ~~and for the 2014-2015 fiscal year only, the Department of~~
70 ~~Environmental Protection shall award the sum of \$3 million in~~
71 ~~grants equally to counties having populations of fewer than~~
72 ~~100,000 for waste tire and litter prevention, recycling~~
73 ~~education, and general solid waste programs. This subsection~~
74 ~~expires July 1, 2015.~~

75 Section 3. For the purpose of incorporating the amendments
76 made by this act to section 403.7095, Florida Statutes, in a
77 reference thereto, paragraph (a) of subsection (6) of section
78 403.413, Florida Statutes, is reenacted to read:

79 403.413 Florida Litter Law.—

80 (6) PENALTIES; ENFORCEMENT.—

81 (a) Any person who dumps litter in violation of subsection
82 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
83 feet in volume and not for commercial purposes is guilty of a
84 noncriminal infraction, punishable by a civil penalty of \$100,
85 from which \$50 shall be deposited into the Solid Waste
86 Management Trust Fund to be used for the solid waste management
87 grant program pursuant to s. 403.7095. In addition, the court
88 may require the violator to pick up litter or perform other
89 labor commensurate with the offense committed.

90 Section 4. For the purpose of incorporating the amendments
91 made by this act to section 403.7095, Florida Statutes, in a
92 reference thereto, paragraph (h) of subsection (5) of section
93 403.7032, Florida Statutes, is reenacted to read:

94 403.7032 Recycling.—

95 (5) The Department of Environmental Protection shall create
96 the Recycling Business Assistance Center by December 1, 2010. In
97 carrying out its duties under this subsection, the department



98 shall consult with state agency personnel appointed to serve as
99 economic development liaisons under s. 288.021 and seek
100 technical assistance from Enterprise Florida, Inc., to ensure
101 the Recycling Business Assistance Center is positioned to
102 succeed. The purpose of the center shall be to serve as the
103 mechanism for coordination among state agencies and the private
104 sector in order to coordinate policy and overall strategic
105 planning for developing new markets and expanding and enhancing
106 existing markets for recyclable materials in this state, other
107 states, and foreign countries. The duties of the center must
108 include, at a minimum:

109 (h) Providing evaluation of solid waste management grants,
110 pursuant to s. 403.7095, to reduce the flow of solid waste to
111 disposal facilities and encourage the sustainable recovery of
112 materials from Florida's waste stream.

113 Section 5. Except as otherwise expressly provided in this
114 act, this act shall take effect July 1, 2016.

115
116 ===== T I T L E A M E N D M E N T =====

117 And the title is amended as follows:

118 Delete lines 13 - 28

119 and insert:

120 the department to deposit certain funds into the solid
121 waste landfill closure account; authorizing the
122 department to use funds from the Solid Waste
123 Management Trust Fund to pay for or reimburse
124 specified expenses under certain circumstances;
125 deleting a solid waste landfill closure account within
126 the Solid Waste Management Trust Fund; amending s.



891642

127 403.7095, F.S.; authorizing waste tire abatement
128 programs under the small county consolidated grant
129 program; removing the waste tire abatement program
130 supported by the solid waste management grant program;
131 removing distribution requirements; deleting an
132 obsolete provision; reenacting ss. 403.413(6)(a) and
133 403.7032(5)(h), F.S., relating to the Florida Litter
134 Law and recycling, respectively, to incorporate the
135 amendments made to s. 403.7095, F.S., in references
136 thereto; providing effective dates.



405980

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Dean)
recommended the following:

1 **Senate Amendment to Amendment (891642)**
2
3 Delete line 42
4 and insert:
5 110,000 ~~100,000~~, with grants to be distributed equally among
6 eligible

By Senator Montford

3-00576A-16

2016922__

1 A bill to be entitled
 2 An act relating to solid waste management; amending s.
 3 403.709, F.S.; providing for the funding of a waste
 4 tire abatement program from the Solid Waste Management
 5 Trust Fund up to a specified percentage of total
 6 funds; establishing a solid waste landfill closure
 7 account within the Solid Waste Management Trust Fund;
 8 specifying the purpose of the account; authorizing the
 9 Department of Environmental Protection to use account
 10 funds to contract with a third party for the closing
 11 and long-term care of solid waste management
 12 facilities under specified circumstances; requiring
 13 the department to deposit certain funds into the solid
 14 waste landfill closure account; authorizing the
 15 department to use funds from the account to pay for or
 16 reimburse specified expenses under certain
 17 circumstances; deleting a solid waste landfill closure
 18 account within the Solid Waste Management Trust Fund;
 19 amending s. 403.7095, F.S.; authorizing waste tire
 20 abatement programs under the small county consolidated
 21 grant program; removing the waste tire abatement
 22 program supported by the solid waste management grant
 23 program; removing distribution requirements; deleting
 24 an obsolete provision; reenacting ss. 403.413(6)(a)
 25 and 403.7032(5)(h), F.S., relating to the Florida
 26 Litter Law and recycling, respectively, to incorporate
 27 the amendments made to s. 403.7095, F.S., in
 28 references thereto; providing an effective date.
 29

Page 1 of 7

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

3-00576A-16

2016922__

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

31
 32 Section 1. Paragraph (e) of subsection (1) and subsection
 33 (5) of section 403.709, Florida Statutes, are amended, present
 34 subsections (2) through (4) of that section are redesignated as
 35 subsections (3) through (5), respectively, and a new subsection
 36 (2) is added to that section, to read:

37 403.709 Solid Waste Management Trust Fund; use of waste
 38 tire fees.—There is created the Solid Waste Management Trust
 39 Fund, to be administered by the department.

40 (1) From the annual revenues deposited in the trust fund,
 41 unless otherwise specified in the General Appropriations Act:

42 (e) Up to 37 percent shall be used for funding a waste tire
 43 abatement program and a solid waste management grant program
 44 pursuant to s. 403.7095 for activities relating to recycling and
 45 waste reduction, including waste tires requiring final disposal.
 46 Of the funding specified in this paragraph, no more than 5
 47 percent of the total may be used for funding the waste tire
 48 abatement program.

49 (2) Notwithstanding subsection (1), a solid waste landfill
 50 closure account is established within the Solid Waste Management
 51 Trust Fund to provide funding for the closing and long-term care
 52 of solid waste management facilities.

53 (a) The department may use funds from the account to
 54 contract with a third party for the closing and long-term care
 55 of a solid waste management facility if:

56 1. The facility has, had, or was not required to obtain a
 57 department permit to operate the facility;

58 2. The permittee, where required by permit or rule,

Page 2 of 7

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

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2016922__

59 provided proof of financial assurance for closure in the form of
 60 an insurance certificate or an alternative form of financial
 61 assurance mechanism established pursuant to s. 403.7125;

62 3. The department has ordered the facility closed or has
 63 deemed the facility abandoned;

64 4. The closure of the facility is accomplished in
 65 substantial accordance with a closure plan approved by the
 66 department; and

67 5. The department has sufficient documentation to confirm
 68 that the issuer of the insurance policy or alternative form of
 69 financial assurance will provide or reimburse the funds required
 70 to complete the closing and long-term care of the facility.

71 (b) The department shall deposit all funds received from
 72 the insurer or other parties for reimbursing the costs of
 73 closing or long-term care of the facility under this subsection
 74 into the solid waste landfill closure account.

75 (c) If the amount available under the insurance policy or
 76 alternative form of financial assurance is insufficient, or is
 77 otherwise inaccessible, to perform or complete the facility
 78 closing or long-term care under this subsection, and the
 79 department has used all such funds from the insurance policy or
 80 alternative form of financial assurance, the department may use
 81 funds from the solid waste landfill closure account to pay for
 82 or reimburse additional expenses needed for performing or
 83 completing the approved facility closure or long-term care
 84 activities.

85 ~~(5)(a) Notwithstanding subsection (1), a solid waste~~
 86 ~~landfill closure account is established within the Solid Waste~~
 87 ~~Management Trust Fund to provide funding for the closing and~~

Page 3 of 7

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

3-00576A-16

2016922__

88 ~~long-term care of solid waste management facilities. The~~
 89 ~~department may use funds from the account to contract with a~~
 90 ~~third party for the closing and long-term care of a solid waste~~
 91 ~~management facility if:~~

92 ~~1. The facility has or had a department permit to operate~~
 93 ~~the facility;~~

94 ~~2. The permittee provided proof of financial assurance for~~
 95 ~~closure in the form of an insurance certificate;~~

96 ~~3. The facility is deemed to be abandoned or was ordered to~~
 97 ~~close by the department;~~

98 ~~4. Closure is accomplished in substantial accordance with a~~
 99 ~~closure plan approved by the department; and~~

100 ~~5. The department has written documentation that the~~
 101 ~~insurance company issuing the closure insurance policy will~~
 102 ~~provide or reimburse the funds required to complete closing and~~
 103 ~~long-term care of the facility.~~

104 ~~(b) The department shall deposit the funds received from~~
 105 ~~the insurance company as reimbursement for the costs of closing~~
 106 ~~or long-term care of the facility into the solid waste landfill~~
 107 ~~closure account.~~

108 ~~(c) This subsection expires July 1, 2016.~~

109 Section 2. Section 403.7095, Florida Statutes, is amended
 110 to read:

111 403.7095 Solid waste management grant program.—

112 (1) The department shall develop a consolidated grant
 113 program for small counties having populations fewer than
 114 100,000, with grants to be distributed equally among eligible
 115 counties. Programs to be supported with the small-county
 116 consolidated grants include those for the purpose of general

Page 4 of 7

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

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2016922__

117 solid waste management, litter prevention and control, waste
 118 tire abatement, and recycling and education programs.

119 ~~(2) The department shall develop a waste tire grant program~~
 120 ~~making grants available to all counties. The department shall~~
 121 ~~ensure that at least 25 percent of the funding available for~~
 122 ~~waste tire grants is distributed equally to each county having a~~
 123 ~~population fewer than 100,000. Of the remaining funds~~
 124 ~~distributed to counties having a population of 100,000 or~~
 125 ~~greater, the department shall distribute those funds on the~~
 126 ~~basis of population.~~

127 ~~(3) From the funds made available pursuant to s.~~
 128 ~~403.709(1)(e) for the grant program created by this section, the~~
 129 ~~following distributions shall be made:~~

130 ~~(a) Up to 50 percent for the program described in~~
 131 ~~subsection (1); and~~

132 ~~(b) Up to 50 percent for the program described in~~
 133 ~~subsection (2).~~

134 (2)(4) The department may adopt rules necessary to
 135 administer this section, including, but not limited to, rules
 136 governing timeframes for submitting grant applications, criteria
 137 for prioritizing, matching criteria, maximum grant amounts, and
 138 allocation of appropriated funds based upon project and
 139 applicant size.

140 ~~(5) Notwithstanding any other provision of this section,~~
 141 ~~and for the 2014-2015 fiscal year only, the Department of~~
 142 ~~Environmental Protection shall award the sum of \$3 million in~~
 143 ~~grants equally to counties having populations of fewer than~~
 144 ~~100,000 for waste tire and litter prevention, recycling~~
 145 ~~education, and general solid waste programs. This subsection~~

3-00576A-16

2016922__

146 ~~expires July 1, 2015.~~

147 Section 3. For the purpose of incorporating the amendments
 148 made by this act to section 403.7095, Florida Statutes, in a
 149 reference thereto, paragraph (a) of subsection (6) of section
 150 403.413, Florida Statutes, is reenacted to read:

151 403.413 Florida Litter Law.—

152 (6) PENALTIES; ENFORCEMENT.—

153 (a) Any person who dumps litter in violation of subsection
 154 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
 155 feet in volume and not for commercial purposes is guilty of a
 156 noncriminal infraction, punishable by a civil penalty of \$100,
 157 from which \$50 shall be deposited into the Solid Waste
 158 Management Trust Fund to be used for the solid waste management
 159 grant program pursuant to s. 403.7095. In addition, the court
 160 may require the violator to pick up litter or perform other
 161 labor commensurate with the offense committed.

162 Section 4. For the purpose of incorporating the amendments
 163 made by this act to section 403.7095, Florida Statutes, in a
 164 reference thereto, paragraph (h) of subsection (5) of section
 165 403.7032, Florida Statutes, is reenacted to read:

166 403.7032 Recycling.—

167 (5) The Department of Environmental Protection shall create
 168 the Recycling Business Assistance Center by December 1, 2010. In
 169 carrying out its duties under this subsection, the department
 170 shall consult with state agency personnel appointed to serve as
 171 economic development liaisons under s. 288.021 and seek
 172 technical assistance from Enterprise Florida, Inc., to ensure
 173 the Recycling Business Assistance Center is positioned to
 174 succeed. The purpose of the center shall be to serve as the

3-00576A-16

2016922

175 mechanism for coordination among state agencies and the private
176 sector in order to coordinate policy and overall strategic
177 planning for developing new markets and expanding and enhancing
178 existing markets for recyclable materials in this state, other
179 states, and foreign countries. The duties of the center must
180 include, at a minimum:

181 (h) Providing evaluation of solid waste management grants,
182 pursuant to s. 403.7095, to reduce the flow of solid waste to
183 disposal facilities and encourage the sustainable recovery of
184 materials from Florida's waste stream.

185 Section 5. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/11/2016

Meeting Date

922

Bill Number (if applicable)

Topic Banking and Insurance

Amendment Barcode (if applicable)

Name Antonio Davis

Job Title Veteran

Address 2313 NW 6th Court
Street

Phone _____

KF Lauderdale FL 33311
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SB 922

Bill Number (if applicable)

Topic SOLID WASTE MANAGEMENT

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 110 E. COLGGE AVE

Phone 850-681-1065

Street
TANAHASSEE

City FL State 3230 Zip

Email keynacory@pacconsultants.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing NATIONAL WASTE + RECYCLING ASSN. - FL CHAPTER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11

Meeting Date

SB 922

Bill Number (if applicable)

Topic Solid Waste - SB 922

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Director of Legislative Affairs - DEP

Address 3900 Commonwealth Blvd

Phone _____

Street

Tallahassee

City

FL

State

32303

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing DEP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Reapportionment
Rules

SENATOR BILL MONTFORD
3rd District

January 21, 2016

Senator Alan Hays, Chair
Senate Appropriations Subcommittee
On General Government
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays:

I respectfully request that SB 922 be scheduled for a hearing before the Senate Appropriations Subcommittee on General Government. Senate Bill 922 would codify provisions in the General Appropriations Act and Implementing Bill relating to the landfill closure and small county solid waste management programs, and provide direction for the expenditure of any funds appropriated to the programs.

Your assistance and favorable consideration of my request is greatly appreciated

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

cc: Jamie DeLoach, Staff Director

BJM/mam

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: CS/SB 966

INTRODUCER: Banking and Insurance Committee and Senator Benacquisto and others

SUBJECT: Unclaimed Property

DATE: February 10, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 966 requires life insurers to determine whether their life or endowment insurance policyholders, annuitants, and retained asset account holders have died by annually comparing them against the United States Social Security Administration Death Master File (DMF). The requirement applies to all life or endowment insurance policies, annuity contracts, and retained asset accounts that were in force on or after January 1, 1992. If a death is indicated, the bill requires the insurer to verify the death, verify if the deceased had other products with the company, determine if benefits are due, and attempt to locate and contact beneficiaries. If the policy or contract proceeds remain unclaimed five years after the date of death of the insured, annuitant, or account holder, the property escheats to the state as unclaimed property. Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the Department of Financial Services (DFS) Bureau of Unclaimed Property no later than May 1, 2021.

The bill applies to all life insurers requirements agreed to by many of the largest life insurers in settlement agreements with the DFS, the Office of the Attorney General, and the Office of Insurance Regulation (OIR), often as part of multi-state settlement agreements. The settlement agreements are related to examinations that often find insurers use information from the Social Security Administration's Death Master File to stop paying a deceased person's annuity, but do not use such information to search for beneficiaries of a life insurance policy. According to the OIR, these settlement agreements have resulted in the return of over \$5 billion to beneficiaries

directly by the companies nationwide and over \$2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The bill is effective upon becoming law.

The bill is estimated to have a positive fiscal impact to the state. According to the Office of Insurance Regulation, remittances “far exceeding \$100 million” are expected by May 1, 2021, as a result of this bill.

II. Present Situation:

Life Insurance

Life insurance is the insurance of human lives.¹ Life insurance is generally purchased to ensure the financial security of the beneficiaries of the policy in the event the insured dies. The two most common types of life insurance are whole life insurance and term life insurance. A whole life insurance policy provides coverage for the life of the policyholder and pays a death benefit when the policyholder dies, regardless of his or her age, or on the maturity date.² A term life insurance policy provides coverage for a specific time period and only pays a benefit if the policyholder dies during the term of the policy. There exist a wide array of life insurance policies that provide options to consumers to create flexible death benefits, flexible premium amounts, allow policyholders investment control of the cash value of the policy at variable rates of return, and more.

Endowment Insurance Policies

An endowment insurance policy provides for the payment of the face of the policy at the end a fixed term of years. As noted by the Department of Financial Services (DFS), a whole life policy is actually an endowment at a limiting age of 100.³ As with the whole life policy, endowment policies provide insurance protection against the economic loss of a premature death. Common endowment terms are five, ten, and twenty years, or to a stated age, such as 65. If the insured is living at the end of the endowment term, the insurance company will pay the face amount of the policy.

Annuities

An annuity is a form of life insurance contract between a consumer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer. In return, the insurer agrees to make periodic payments back to the annuitant at a future date, either for the annuitant’s life or a specified period. Annuities are often used for retirement planning because they provide a guaranteed source of income for future years. Annuities are available in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum

¹ Section 624.602, F.S.

² The maturity date for a life insurance policy often is when a policyholder turns 100 years old, but some policies have a later maturity date.

³ Florida Department of Financial Services Division of Consumer Services, Life Insurance Overview, <http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm> (click on link for types of policies)(last visited January 8, 2015).

payment in exchange for immediate and regular periodic payments, which may be for a lifetime. For a deferred annuity, premiums are usually either paid in a lump sum or through a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows tax-deferred. An annuity may or may not have a death benefit upon the death of the annuitant, based on the payment plan of the annuity. In a “life only” annuity, payments are only made until the death of the annuitant while in a fixed period annuity payments are made for a fixed number of years certain regardless of whether the annuitant dies during the years certain. Many life insurers regularly seek to verify whether an annuitant has died by searching the Social Security Administration Death Master File.

Retained Asset Accounts

A retained asset account is an account that may be used to settle a death claim.⁴ Generally, a beneficiary establishes a retained asset account to deposit the proceeds into an interest bearing account so that the beneficiary may consider investment options and other possible uses of the money. Generally, the beneficiary can choose to withdraw money from the account in a single “lump sum” payment or via installments, or may choose to only receive interest payments with any remaining money at the beneficiary’s death passing on to his or her beneficiaries.

Florida Disposition of Unclaimed Property Act

In 1987, the Florida Legislature adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (chapter 717, F.S., the Act).⁵ The Act defines unclaimed property as 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.⁶ 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 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

⁴ National Association of Insurance Commissioners, *Retained Asset Accounts and Life Insurance: What Consumers Need to Know About Life Insurance Benefit Payment Options*, http://www.naic.org/documents/consumer_alert_raa.htm (January 8, 2016).

⁵ Ch. 87-105, L.O.F. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (Last visited March 26, 2014)

⁶ ss. 717.104 – 717.116, F.S.

distributable, unless otherwise provided in the Act.⁷ Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate the apparent owners within 180 days after an account becomes inactive.⁸ 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.⁹ 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.¹⁰

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.¹¹ 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.¹² 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 must deliver or pay to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.¹³

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.¹⁴ 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 Fund.¹⁵

Like many other state unclaimed property programs, 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.¹⁶

Unclaimed Property Owing Under Life Insurance Policies

The Act provides that funds held or owing under a life or endowment insurance policy or an annuity contract that has matured or terminated are presumed unclaimed if unclaimed for more

⁷ s. 717.102(1), F.S.

⁸ s. 717.117(4), F.S.

⁹ s. 717.117, F.S.

¹⁰ s. 717.119, F.S.

¹¹ s. 717.1201, F.S.

¹² ss. 717.117 and 717.124, F.S.

¹³ s. 717.124, F.S.

¹⁴ s. 717.123, F.S.

¹⁵ Id.

¹⁶ 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.

than five years¹⁷ after the funds became due and payable as established by records of the insurance company owing the funds.¹⁸

Section 627.461, F.S., requires that every contract of insurance provide that, when a policy becomes a claim upon the death of the insured, settlement of the policy shall be made upon receipt of due proof of death and surrender of the policy. Accordingly, life insurance policies and annuities contracts with death benefits issued under Florida law have contractual terms that provide that the policy matures upon the insurer receiving actual proof of death, generally in the form of a certified copy of the death certificate.

Regulatory Examination of Life Settlement Claim Practices

According to the Office of Insurance Regulation, a 2009 Florida market conduct investigation revealed that some life insurance companies were using information from the Social Security Administration's Death Master File to stop paying a deceased person's annuity, but were not using such information to search for beneficiaries of a life insurance policy. Because insurers were not using information to find beneficiaries, the practice sometimes resulted in continued payment deductions from the accounts of deceased policyholders for the payment of premiums.¹⁹

Often, claims are not made by the beneficiaries of life insurance policies because the beneficiary is unaware of the policy. Additionally, insurers generally did not remit the benefits under life insurance policies and annuities with a death benefit to the Bureau of Unclaimed Property unless the insured attained, or would have attained, the limiting age on an at-force policy, which for most policies is 100 years of age or greater.

In May 2011, insurance regulators from a number of states, including Florida, established a special task force to coordinate regulatory investigations of the claim settlement practices of life insurance companies. In particular, the task force focused on the allegations that many of the insurers were using the DMF to terminate payments under annuity contracts, but failed to use this information to facilitate claims payments on life insurance policies.²⁰ Kevin McCarty, the Director of the Florida Office of Insurance Regulation, has served as the chair of the task force since its inception. Currently, 22 of the top 40 nationally significant groups writing policies have reached settlements or concluded an examination.²¹

¹⁷ If the insured attains the limiting age under an in-force policy or would have done so if alive, the funds are deemed unclaimed if unclaimed for 2 years.

¹⁸ s. 717.107(1), F.S.

¹⁹ Florida Department of Financial Services Division of Consumer Services, Life Insurance Settlement Information, <http://www.myfloridacfo.com/Division/Consumers/FAQ/FAQ.htm> (click on hyperlink for John Hancock Life Insurance)(last visited January 8, 2016).

²⁰ National Association of Insurance Commissioners, *News Release: Regulators to Review Life Insurance Payment Practices*, (May 17, 2011)(last visited January 8, 2016).

²¹ Florida Office of Insurance Regulation, *Top 40 Nationally Significant Groups Writing Direct Life, Annuity and Other Considerations*, <http://www.floir.com/siteDocuments/Top40LifeGroups.pdf> (last visited January 8, 2016).

Life Insurance Claim Settlement Practices

Florida has entered into a number of settlement agreements with 20 life insurers from 2011 to the present, often as part of multi-state settlement agreements.²² Participants in the examination and settlement process have included Chief Financial Officer Jeff Atwater through the Bureau of Unclaimed Property at the Department of Financial Services, Attorney General Pam Bondi through the Office of the Attorney General, and the Office of Insurance Regulation (OIR). According to the OIR, these life claim settlement agreements have resulted in the return of over \$5 billion to beneficiaries directly by the companies and over \$2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The settlements generally require the life insurer to compare all the life insureds listed in company records against the DMF.²³ For all policies the company obtains notice of the death of the insured through the DMF search or company records, it must conduct a thorough search for the beneficiaries. If a life insurance beneficiary contacts the insurer, the company must provide claims forms and instructions for the making of a claim. The insurers retain the right to require a death certificate as proof of death before paying proceeds to a beneficiary. If the company cannot locate the beneficiary, the insurer must remit the proceeds as unclaimed property within five years of the date of the death of the life insurance policyholder. The settlement agreements also establish business practices to facilitate payments to owners of assets under annuity contracts and retained asset accounts.

Social Security Administration Death Master File

The Social Security Administration (SSA) collects death information to administer its programs.²⁴ The SSA receives death reports from many sources, including family members, funeral homes, financial institutions, postal authorities, States and other Federal agencies. The information is then compiled in the Death Master File (DMF). The DMF is actually a subset of the death information on the Numerical Identification System (Numident). Numident is the SSA electronic database that contains the records of Social Security Numbers assigned to individuals since 1936. The DMF includes the deceased individual's social security number, first name, middle name, last name, date of birth, and date of death.

There are two versions of the DMF. The full file contains all death records extracted from the Numident database, including death data received from the States and is shared only with certain Federal and State agencies pursuant to section 205(r) of the Social Security Act. The limited access public file contains death records extracted from the Numident database, but does not include death data received from the States. The public file is available through the Department of Commerce's National Technical Information Service, a clearinghouse for government information, which sells it to the public. Access to the DMF is restricted and requires users to

²² Office of Insurance Regulation, *Life Claim Settlement Practices*, http://www.floir.com/Sections/LandH/life_claims_settlement_practices_hearing05192011.aspx (last visited January 8, 2016).

²³ See Florida Office of Insurance Regulation, *Florida's Regulatory Life Claim Settlement Agreements*, <http://www.floir.com/siteDocuments/LifeClaimsSettlements.pdf> (follow hyperlinks to regulatory settlement agreements)(last visited January 8, 2016).

²⁴ Social Security Administration, *Requesting the Death Master File*, https://www.ssa.gov/dataexchange/request_dmf.html (last visited January 7, 2016).

have a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty. Further, any party accessing the DMF must certify it has systems, facilities, and procedures to safeguard the information in the DMF and has experience in maintaining the confidentiality, security, and appropriate use of such information.

Thrivent Financial for Lutherans v. State of Florida

The 2014 decision of the Florida District Court of Appeal for the First District resolved a dispute between the DFS and Thrivent Financial for Lutherans (Thrivent) as to when funds under a life insurance or endowment insurance policy or annuity contract become due and payable, thus triggering the start of the dormancy period that results in the funds being remitted to the DFS as unclaimed property after the dormancy period ends.²⁵ Thrivent had appealed a DFS declaratory statement finding that life insurance funds are “due and payable” under s. 717.107(1), F.S., upon the death of the insured, at which time the dormancy period is automatically triggered. The DFS declaratory statement interpreting the statute also opined that s. 717.107, F.S., created an affirmative duty on insurer to search databases, such as the DMF, to determine if any of its insureds has died.

The Court found the DFS declaratory statement interpreting s. 717.107(1), F.S., invalid because it incorrectly interpreted the statute. The Court noted that under s. 717.107(1), F.S., life insurance funds “become due and payable as established by the records of the insurance company.” Because s. 627.461, F.S., requires each life insurance contract to provide that payment “shall be made upon receipt of due proof of death and surrender of the policy” the records of the insurer do not establish funds as due and payable under s. 717.107(1), F.S., until the insurer receives proof of death and surrender of the policy. The Court noted subsection (3) of the statute provides that contracts “not matured by actual proof of the death of the insured or the annuitant” according to company records are deemed matured and the proceeds are due and payable if the company knows the insured or annuitant has died or the insured has attained the limiting age. The Court reasoned that to interpret subsection (1) to make policy proceeds due and payable once the insured dies would render meaningless subsection (3). The Court also refused to impose an affirmative duty on insurers to search death records in order to determine whether any insured has died. The Court noted that the plain language of s. 717.107, F.S., does not impose such a duty and refused to rewrite the statute based on policy consideration, instead noting that policy concerns “must be addressed by the Legislature.”

III. Effect of Proposed Changes:

Section 1 amends s. 717.107, F.S., of the Florida Disposition of Unclaimed Property Act to establish that funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than five years after the date of death of the insured, annuitant, or retained asset account holder. Under current law, such funds are presumed unclaimed if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding the funds. The decision in *Thrivent Insurance for Lutherans v. State of Florida, Department of Financial Services*, (Thrivent decision) established that under current law, funds

²⁵ *Thrivent Financial for Lutherans v. State of Florida, Department of Financial Services*, 145 So.3d 178 (Fla. 1st DCA 2014).

are not due and payable as established from the records of the insurance company until the company receives a certified copy of a death certificate as required by the contract terms of the policy and s. 627.461, F.S.

The bill requires insurers to at least annually perform a comparison of its insureds against the United States Social Security Administration Death Master File (DMF). The comparison must be performed for all the insurer's policyholders under life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The Thrivent decision found that currently the DFS lacks the authority to require such a search under s. 717.107, F.S. The annual comparison must be made before August 31 of each year. Additionally, if the insurer makes a comparison of its annuity policyholders against the DMF more frequently than once a year, the insurer must perform the DMF comparison required by this bill as frequently. An insurer may perform the comparison using any database or service that the DFS determines is at least as comprehensive as the DMF for the purpose of indicating a person has died.

The bill establishes that an insured, annuitant, or retained asset account holder is presumed deceased if that person's date of death is indicated on the DMF, unless the insurer has in its records competent, substantial evidence that the person is living. The insurer is required to account for common variations in data and for partial names, social security numbers, dates of birth, and addresses which would otherwise preclude an exact match.

The following are exempted from the bill's requirements:

- An annuity issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) or that is issued to fund an employment-based retirement plan, including any deferred compensation plan.
- A policy of credit life or accidental death insurance.
- A joint and survivor annuity contract, if an annuitant is still living.
- A policy issued to a group master policy owner for which the insurer does not perform recordkeeping functions that provide the insurer with access to, for each individual insured, the social security number or name and date of birth, beneficiary designation information, coverage eligibility, the benefit amount, and premium payment status.

The bill requires an insurer, no later than 120 days after learning of a death through a DMF match, to complete and document an effort to confirm the death of the insured, annuitant, or retained asset account holder. The insurer must review its records to determine if that person purchased other products from the insurer. The insurer must also determine whether benefits are due. Finally, the insurer must complete and document an effort to locate and contact the beneficiary or authorized representative unless such person communicates with the insurer before the expiration of the 120-day period. The effort to locate the beneficiary or authorized representative must include sending that person information concerning the insurer's claim process, including notice of any requirement in a policy, annuity, or retained asset account to provide a certified original or copy of the death certificate.

Insurers and their agents or third parties may not charge insureds, annuity owners, retained asset account holders, and beneficiaries fees or costs associated with any search, verification, claim or delivery of funds pursuant to the requirements of s. 717.107, F.S.

Section 2 of the bill states that the bill is remedial and applies retroactively. The retroactive application of the bill evidences legislative intent to apply the bill to policies, contracts and accounts entered into, prior to the effective date of the bill.

Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the DFS no later than May 1, 2021. The prohibition against fines, penalties and additional interest is designed to provide insurers five years to comply with the requirements of the bill before being subject to such sanctions.

Section 3 provides that the act is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions of CS/SB 966 are applied to life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The bill expresses clear intent to apply retroactively, thus constitutional concerns are raised if the statute impairs vested rights, creates new obligations, or imposes new penalties.²⁶ A vested right is more than a mere expectation based on an anticipation of the continuance of an existing law. It must be an immediate, fixed right of present or future enjoyment.²⁷ If, however, the statute is remedial in nature and expresses clear intent to apply retroactively, it does not raise constitutional concerns. Remedial statutes are those that do not create new or take away vested rights.²⁸

Representatives of some life insurers argue that the application of the bill's requirements to life insurance policies with contractual terms that require proof of death in accordance with s. 627.461, F.S., could raise constitutional issues related to the impairment of contracts. Representatives from the Department of Financial Services counter such

²⁶ *R.A.M. of South Florida, Inc., v. WCI Communities, Inc.*, 869 So.2d 1210, 1216 (Fla. 2nd DCA 2004).

²⁷ *Florida Hosp. Waterman, Inc. v. Buster*, 948 So.2d 478, 490 (Fla. 2008).

²⁸ *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

concerns, pointing to the United States Supreme Court decision in *Connecticut Mutual Life Insurance Co. v. Moore*²⁹ (*Moore*).

In *Moore*, the Court addressed the validity of the New York unclaimed property statute as applied to life insurance policies, including “policies payable on death in which the insured has died and no claim by the person entitled thereto has been made for seven years.”³⁰ The Court addressed whether the unclaimed property statute impaired the obligation of contract within the meaning of Art. I, S. 10 of the United States Constitution.³¹ The insurers argued that the terms of the insurance policies provided the insurer has no obligation until proof of death is submitted and the policy is surrendered. The unclaimed property statute, the insurers further argued, transforms a conditional obligation under the life insurance policy into a liquidated obligation.³²

The Supreme Court held that the New York statute did not violate the constitution because of its enforced variations from the insurance policy provisions.³³ The Court reasoned that the state has the same power to seize abandoned life insurance moneys as abandoned bank deposits, despite the differences between the two. The Court concluded by saying it saw no constitutional reason why a state may not proceed administratively to take over the care of unclaimed property, noting that the right of appropriation by the state of abandoned property has existed for centuries in the common law.³⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Many beneficiaries of life or endowment insurance policies and annuities contracts who are unaware of such policies will benefit by claiming benefits after being contacted by a life insurer. If the life insurer remits the funds held or owing under the policy or contract to the DFS, Bureau of Unclaimed Property, beneficiaries will benefit by having a central location with which to search for possible life insurance proceeds.

Life insurers will incur indeterminate costs related to identifying policies and contracts subject to the provisions of the bill, conducting searches of the DMF to identify deceased policyholders, and attempting to locate beneficiaries.

²⁹ 333 U.S. 541 (1948).

³⁰ *Moore*, 333 U.S. 541 at 543.

³¹ *Moore*, 333 U.S. 541 at 545.

³² *Moore*, 333 U.S. 541 at 546.

³³ *Moore*, 333 U.S. 541 at 546.

³⁴ *Moore*, 333 U.S. 541 at 547.

C. Government Sector Impact:

The Department of Financial Services indicates that the Bureau of Unclaimed Property expects to receive reports and remittances “far exceeding \$100 million” as insurers are unable to pay beneficiaries after searching the DMF and performing due diligence searches for beneficiaries. The DFS did not project remittance amounts to the state for the coming fiscal years because the bill specifies that insurers will not be subject to fines, penalties or additional interest related to the remittance of unclaimed proceeds on policies and contracts where the insured had died prior to the dormancy trigger time period (generally five years) expiring.

The department further indicates a potential for unknown litigation expenses if insurance companies challenge the law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 717.107 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 19, 2016:

The CS requires insurers, within 120 days after learning of the death of an insured, annuitant, or retained asset account holder, to complete an effort to confirm the death, review its records to determine if the person has other products from the insurer, determine, whether benefits are due, and complete an effort to locate and contract a beneficiary that has not contacted the insurer. The effort must include providing information regarding the claim process and the requirements for submitting a claim.

The CS also:

- Exempts from the bill credit life policies and joint and survivor annuities where an annuitant is still living.
- Allows insurers to disclose minimal personal information about an insured, annuitant, or account holder to outside parties in an effort to locate a beneficiary, to the extent allowed by law.
- Allows the insurer to use an alternate database or service that DFS determines is at least as comprehensive as the Death Master File for purposes of indicating a person has died.

- Clarifies that an insurer may use competent, substantial evidence to show that a person presumed dead by the Death Master File is actually alive.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Banking and Insurance; and Senators
Benacquisto and Gaetz

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A bill to be entitled

An act relating to unclaimed property; amending s. 717.107, F.S.; revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; revising a condition of when certain insurance policies or annuity contracts are deemed matured and the proceeds are due and payable; requiring an insurer to compare records of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File or a certain database or service to determine if a death is indicated; providing requirements for the comparison; providing for a presumption of death for certain individuals; providing an exception; requiring an insurer to account for certain variations in data and partial information; providing the circumstances under which a policy, a contract, or an account is deemed to be in force; providing applicability; defining a term; requiring an insurer to follow certain procedures after learning of a death through a specified comparison; authorizing an insurer to disclose certain personal information to specified persons for certain purposes; prohibiting an insurer and specified entities from charging fees and costs associated with certain activities; conforming provisions to changes made by the act; providing retroactive applicability; providing an effective date.

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

Section 1. Section 717.107, Florida Statutes, is amended to read:

717.107 Funds owing under life insurance policies, annuity contracts, and retained asset accounts; fines, penalties, and interest; United States Social Security Administration Death Master File.—

(1) Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder funds became due and payable as established from the records of the insurance company holding ~~or owing the funds~~, but property described in paragraph (3) (d) ~~(3) (b)~~ is presumed unclaimed if such property is not claimed for more than 2 years. The amount presumed unclaimed shall include any amount due and payable under s. 627.4615.

(2) If a person other than the insured, ~~or~~ annuitant, or retained asset account holder is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, ~~the~~ or ~~annuitant, or the~~ retained asset account holder according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof

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61 of the death of the insured, the ~~or~~ annuitant, or the retained
 62 asset account holder according to the records of the company is
 63 deemed matured and the proceeds due and payable if any of the
 64 following applies:

65 (a) The company knows that the insured, the ~~or~~ annuitant,
 66 or the retained asset account holder has died, ~~or~~

67 (b) A presumption of death made in accordance with
 68 paragraph (8) (b) has not been rebutted.

69 (c) The policy or contract has reached its maturity date.

70 (d) ~~(b)~~1. The insured has attained, or would have attained
 71 if he or she were living, the limiting age under the mortality
 72 table on which the reserve is based;

73 2. The policy was in force at the time the insured
 74 attained, or would have attained, the limiting age specified in
 75 subparagraph 1.; and

76 3. Neither the insured nor any other person appearing to
 77 have an interest in the policy within the preceding 2 years,
 78 according to the records of the company, has assigned,
 79 readjusted, or paid premiums on the policy; subjected the policy
 80 to a loan; corresponded in writing with the company concerning
 81 the policy; or otherwise indicated an interest as evidenced by a
 82 memorandum or other record on file prepared by an employee of
 83 the company.

84 (4) For purposes of this chapter, the application of an
 85 automatic premium loan provision or other nonforfeiture
 86 provision contained in an insurance policy does not prevent the
 87 policy from being matured or terminated under subsection (1) if
 88 the insured has died or the insured or the beneficiaries of the
 89 policy otherwise have become entitled to the proceeds thereof

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90 before the depletion of the cash surrender value of a policy by
 91 the application of those provisions.

92 (5) If the laws of this state or the terms of the life
 93 insurance policy require the company to give notice to the
 94 insured or owner that an automatic premium loan provision or
 95 other nonforfeiture provision has been exercised and the notice,
 96 given to an insured or owner whose last known address according
 97 to the records of the company is in this state, is
 98 undeliverable, the company shall make a reasonable search to
 99 ascertain the policyholder's correct address to which the notice
 100 must be mailed.

101 (6) Notwithstanding any other provision of law, if the
 102 company learns of the death of the insured, the ~~or~~ annuitant, or
 103 the retained asset account holder and the beneficiary has not
 104 communicated with the insurer within 4 months after the death,
 105 the company shall take reasonable steps to pay the proceeds to
 106 the beneficiary.

107 (7) Commencing 2 years after July 1, 1987, every change of
 108 beneficiary form issued by an insurance company under any life
 109 or endowment insurance policy or annuity contract to an insured
 110 or owner who is a resident of this state must request the
 111 following information:

112 (a) The name of each beneficiary, or if a class of
 113 beneficiaries is named, the name of each current beneficiary in
 114 the class.

115 (b) The address of each beneficiary.

116 (c) The relationship of each beneficiary to the insured.

117 (8) (a) Notwithstanding any other provision of law, an
 118 insurer shall compare the records of its insureds' life or

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119 endowment insurance policies, annuity contracts that provide a
 120 death benefit, and retained asset accounts that were in force at
 121 any time on or after January 1, 1992, against the United States
 122 Social Security Administration Death Master File to determine if
 123 the death of an insured, an annuitant, or a retained asset
 124 account holder is indicated. The comparison must use the name
 125 and social security number or date of birth of the insured,
 126 annuitant, or retained asset account holder. The comparison must
 127 be made on at least an annual basis before August 31 of each
 128 year. If an insurer performs such a comparison regarding its
 129 annuities or other books of business more frequently than once a
 130 year, the insurer must also make a comparison regarding its life
 131 insurance policies, annuity contracts that provide a death
 132 benefit, and retained asset accounts at the same frequency as is
 133 made regarding its annuities or other books or lines of
 134 business. An insurer may perform the comparison required by this
 135 paragraph using any database or service that the department
 136 determines is at least as comprehensive as the United States
 137 Social Security Administration Death Master File for the purpose
 138 of indicating that a person has died.

139 (b) An insured, an annuitant, or a retained asset account
 140 holder is presumed deceased if the date of his or her death is
 141 indicated by the comparison required under paragraph (a), unless
 142 the insurer has in its records competent and substantial
 143 evidence that the person is living, including, but not limited
 144 to, a contact made by the insurer with such person or his or her
 145 legal representative. The insurer shall account for common
 146 variations in data and for any partial names, social security
 147 numbers, dates of birth, and addresses of the insured, the

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148 annuitant, or the retained asset account holder which would
 149 otherwise preclude an exact match.

150 (c) For purposes of this section, a policy, an annuity
 151 contract, or a retained asset account is deemed to be in force
 152 if it has not lapsed, has not been cancelled, or has not been
 153 terminated at the time of death of the insured, the annuitant,
 154 or the retained asset account holder.

155 (d) This subsection does not apply to an insurer with
 156 respect to benefits payable under:

157 1. An annuity that is issued in connection with an
 158 employment-based plan subject to the Employee Retirement Income
 159 Security Act of 1974 or that is issued to fund an employment-
 160 based retirement plan, including any deferred compensation plan.

161 2. A policy of credit life or accidental death insurance.

162 3. A joint and survivor annuity contract, if an annuitant
 163 is still living.

164 4. A policy issued to a group master policy owner for which
 165 the insurer does not perform recordkeeping functions. As used in
 166 this subparagraph, the term "recordkeeping" means those
 167 circumstances under which the insurer has agreed through a group
 168 policyholder to be responsible for obtaining, maintaining, and
 169 administering, in its own or its agents' systems, information
 170 about each individual insured under a group insurance policy or
 171 a line of coverage thereunder, including at least the following:

172 a. The social security number, or name and date of birth;

173 b. Beneficiary designation information;

174 c. Coverage eligibility;

175 d. The benefit amount; and

176 e. Premium payment status.

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- 177 (9) No later than 120 days after learning of the death of
 178 an insured, an annuitant, or a retained asset account holder
 179 through a comparison under subsection (8), an insurer shall:
 180 (a) Complete and document an effort to confirm the death of
 181 the insured, annuitant, or retained asset account holder against
 182 other available records and information.
 183 (b) Review its records to determine whether the insured,
 184 annuitant, or retained asset account holder purchased other
 185 products from the insurer.
 186 (c) Determine whether benefits may be due under a policy,
 187 an annuity, or a retained asset account.
 188 (d) Complete and document an effort to locate and contact
 189 the beneficiary or authorized representative under a policy, an
 190 annuity, or a retained asset account, if such person has not
 191 communicated with the insurer before the expiration of the 120-
 192 day period. The effort must include:
 193 1. Sending to the beneficiary or authorized representative
 194 information concerning the claim process of the insurer.
 195 2. Notice of any requirement to provide a certified
 196 original or copy of the death certificate, if applicable under
 197 the policy, annuity, or retained asset account.
 198 (10) An insurer may, to the extent permitted by law,
 199 disclose the minimum necessary personal information about an
 200 insured, an annuitant, a retained asset account owner, or a
 201 beneficiary to an individual or entity reasonably believed by
 202 the insurer to possess the ability to assist the insurer in
 203 locating the beneficiary or another individual or entity that is
 204 entitled to payment of the claim proceeds.
 205 (11) An insurer, or any agent or third party that it

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- 206 engages or that works on its behalf, may not charge insureds,
 207 annuitants, retained asset account holders, beneficiaries, or
 208 the estates of insureds, annuitants, retained asset account
 209 holders, or the beneficiaries of an estate any fees or costs
 210 associated with any search, verification, claim, or delivery of
 211 funds conducted pursuant to this section.
 212 Section 2. The amendments made by this act are remedial in
 213 nature and apply retroactively. Fines, penalties, or additional
 214 interest may not be imposed due to the failure to report and
 215 remit an unclaimed life or an endowment insurance policy, a
 216 retained asset account, or an annuity contract with a death
 217 benefit if any unclaimed life or endowment insurance policy,
 218 retained asset account, or annuity contract proceeds are
 219 reported and remitted to the Department of Financial Services on
 220 or before May 1, 2021.
 221 Section 3. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

Meeting Date

SB 966

Bill Number (if applicable)

Topic SB 966

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

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Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

966

Bill Number (if applicable)

Topic Unclaimed Properties

Amendment Barcode (if applicable)

Name Caitlin Murray

Job Title Director of Government Affairs

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Office of Insurance Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16
Meeting Date

966
Bill Number (if applicable)

Topic UNCLAIMED PROPERTY

Amendment Barcode (if applicable)

Name KYLE URICH

Job Title SVP

Address 3159 SHAMROCK S.

Phone 850-566-4204

TALLAHASSEE FL 32309
Street City State Zip

Email KURICH@FAIA.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL ASSOC OF INSURANCE AGENTS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 20, 2015

The Honorable Alan Hays
Senate Appropriations Subcommittee on General Government, Chair
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 966- Unclaimed Property

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 966, Relating to Unclaimed Property, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

Cc: Jamie DeLoach

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: PCS/CS/SB 992 (841824)

INTRODUCER: Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Brandes

SUBJECT: Department of Financial Services

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 992 makes various changes to statutes relating to the Department of Financial Services (DFS or the department).

Current law requires plaintiffs to serve lawsuits on insurance companies by serving documents initiating the lawsuit at the department. These documents are sent to the DFS by mail or by process server. The bill allows the DFS to create a system for electronic service of process and create an internet-based system for distributing documents to insurance companies.

The Chief Financial Officer (CFO) is designated the State Fire Marshal. The CFO administers the state fire code and the certification of firefighters. This bill provides for expiration of firefighter certifications after four years and provides a renewal process. It provides additional grounds that the State Fire Marshal can suspend, revoke, or deny an application for certification. The bill creates a procedure for an applicant for firefighter certification with a criminal record or dishonorable discharge from the United States Armed Forces to obtain a certificate if they can demonstrate by clear and convincing evidence that they do not pose a risk to persons or property.

The bill creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments. The program will provide financial assistance to improve firefighter safety and

enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The bill provides that employees of the state university system, a special district, or a water management district can participate in the deferred compensation program for state employees administered by the department.

This bill amends the Florida Single Audit Act to raise the audit threshold from \$500,000 to \$750,000 to conform to the federal single audit act. It reorganizes the statute to place the provisions relating to higher education entities in one section.

The bill provides that a licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

The bill authorizes the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association's regular membership but does not provide for nominations.

The department administers the sinkhole neutral evaluation program for the resolution of disputed sinkhole insurance claims. This bill amends the qualifications of the neutral evaluator to provide that one cannot serve as a neutral evaluator on a claim if the individual was employed, within the previous five years, by the firm that did the initial sinkhole testing.

The bill allows the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code. This will allow, for example, the DFS' Division of Agent and Agency Services access to photographs to aid in the investigation of insurance agents.

The bill amends the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.

The bill provides cost savings to the state, estimated to be \$54,500, due to the changes in the service of process. The bill appropriates the recurring sum of \$500,000 and one position to support the Volunteer Firefighter Assistance Grant Program from the Insurance Regulatory Trust Fund.

II. Present Situation:

Service of Process on the Chief Financial Officer

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Section 48.151, F.S., provides that the Chief Financial Officer ("CFO") is the agent for service of process for:

- All insurers applying for authority to transact insurance;
- All licensed nonresident insurance agents;

- All nonresident disability insurance agents;
- Any unauthorized insurer under s. 626.906 or s. 626.937, F.S.;
- All domestic reciprocal insurers;
- All fraternal benefit societies;
- All warranty associations;
- All prepaid limited health service organizations; under chapter 636; and
- All persons required to file statements under s. 628.461, F.S.¹

All persons or entities for which the CFO is the agent for service of process must designate an individual to receive documents served on DFS. In order to serve process on an insurance company or other entity for which the CFO is the agent, a plaintiff must mail the summons and other documents to the DFS or serve the documents at the DFS by personal service at the DFS Tallahassee office. The plaintiff must pay a \$15 fee to the DFS for service.² The CFO cannot accept service via electronic mail.³

Once the DFS receives the documents, it forwards them to the insurer or entity.⁴ The CFO can use registered or certified mail to send the documents to authorized insurers.⁵ The CFO can use registered mail to send the documents to unauthorized insurers.⁶ Section 624.307, F.S., also allows the CFO to use certified mail, registered mail, or other verifiable means to serve regulated entities.

According to representatives of the DFS, many law firms are creating and filing documents in court electronically but must print and send paper copies to the DFS. The DFS believes it could improve efficiency if plaintiffs were allowed to serve DFS electronically.⁷

Alternative Retirement Benefits for OPS Employees

Section 110.1315, F.S., requires that upon review and approval by the Executive Office of the Governor, the DFS must provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The DFS is allowed to contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code.⁸ By creating the program for such employees, the state does not have to contribute to Social Security as an employer.⁹ The DFS reports that the program saved the state \$11 million in 2013 and 2014.¹⁰

¹ See s. 48.151(3), F.S.

² See s. 624.502, F.S.

³ See <http://www.myfloridacfo.com/division/legalservices/ServiceofProcess/default.htm> (last visited January 13, 2016).

⁴ See ss. 624.307, 624.423, and 626.907, F.S.

⁵ See s. 624.423, F.S.

⁶ See s. 626.907, F.S.

⁷ Interview with DFS staff, January 13, 2016.

⁸ See s. 110.1315(1), F.S.

⁹ See *Description of Intended Single Source Purchase*, Department of Financial Services, December 22, 2015 at http://www.myflorida.com/apps/vbs/adoc/F20507_PUR7776DFSTRSS151610.pdf (last visited January 14, 2016).

¹⁰ *Id.*

Florida Deferred Compensation Program

Section 112.215, Florida Statutes, requires the CFO to create a deferred compensation plan for state employees. The plan allows state employees to defer a portion of their income and place it in an investment account. The employee does not pay taxes on the deferred amount or any investment gains until the employee withdraws the money.¹¹

Approval of Bonds

Section 137.09, F.S., provides that each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. These bonds must be approved by the board of county commissioners and by the DFS. Section 374.983, F.S., requires each commissioner of the Board of Commissioners of the Florida Inland Navigation District to post a surety bond in the sum of \$10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of the office. This bond must be approved by the CFO. The DFS has not been required to approve bonds under either of these statutes in quite some time and believes the requirements are not needed.¹²

Florida Single Audit Act

Section 215.97, F.S., creates the Florida Single Audit Act. The DFS has explained the history and purpose:

In 1998, the Florida Single Audit Act was enacted to establish state audit and accountability requirements for state financial assistance provided to nonstate entities. The Legislature found that while federal financial assistance passing through the state to nonstate entities was subject to mandatory federal audit requirements, significant amounts of state financial assistance was being provided to nonstate entities that was not subject to audit requirements that paralleled federal audit requirements. Accordingly, it was the intent of the Act that state audit and accountability requirements, to the extent possible, parallel the federal audit requirements.¹³

Each nonstate entity that expends more than \$500,000 in state financial assistance¹⁴ in a fiscal year is required to have an audit for that fiscal year. Nonstate entities include local governments, nonprofit organizations, and for-profit organizations.¹⁵

¹¹ See <https://www.myfloridaderferredcomp.com/SOFWeb/default.aspx> (last visited January 14, 2016).

¹² See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

¹³ See <https://apps.fldfs.com/fsaa/singleauditact.aspx> (last visited January 14, 2016).

¹⁴ State financial assistance is state resources provided to a nonstate entity to carry out a state project.

¹⁵ See s. 215.97(2)(m), F.S.

Section 215.97(8)(o), F.S., provides that contracts involving the State University System or the Florida College System funded by state financial assistance may be in the form of the following:

- A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or
- A combination of the above contract forms.

The DFS reports that because references to higher education entities are spread throughout the Florida Single Audit Act, there is confusion over which provisions apply in various situations.¹⁶

Driver Licenses Photographs

The Department of Highway Safety and Motor Vehicles maintains digital photographs of licenses pursuant to s. 322.142, F.S. Those photographs are exempt from public disclosure but may be shared with various state agencies to assist the agencies' with their duties. The DFS can obtain such photographs to facilitate the validation of unclaimed property claims and the identification of false or fraudulent claims.¹⁷

Boiler Regulation

Chapter 554, F.S., is the Florida Boiler Safety Act. The DFS administers the boiler safety code. Section 509.211, F.S., provides that every enclosed room or space that contains a boiler and that is located in a public lodging establishment must be equipped with a carbon monoxide sensor that bears the label of a nationally tested laboratory and complies with the most recent Underwriters Laboratories Standard 2034.¹⁸ The statute provides that the carbon monoxide detector is not necessary if the DFS Division of State Fire Marshal determines the carbon monoxide hazard has been mitigated.¹⁹

Public Adjusters

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies. The Department of Financial Services (DFS) regulates all types of adjusters.

¹⁶ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

¹⁷ See s. 322.142(4), F.S.

¹⁸ The standard relating to carbon monoxide detectors. See <http://ulstandards.ul.com/standard/?id=2034> (last visited January 14, 2016).

¹⁹ See s. 509.211(4), F.S.

Appointments to the Board of the Florida Surplus Lines Service Office

Section 626.921, F.S., creates the Florida Surplus Lines Service Office (FSLSO). The FSLSO is a self-regulating, nonprofit association for Florida surplus lines agents. The FSLSO's responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.²⁰ The FSLSO is operated under the supervision of a board of governors consisting of:

- Five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association.
- Two individuals appointed by the DFS, one from each of the two largest domestic agents' associations, each of whom must be licensed surplus lines agents.
- The Insurance Consumer Advocate.
- One individual appointed by the department, who must be a risk manager for a large domestic commercial enterprise.²¹

The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors and claim adjustment companies. The purpose of the association is to encourage an exchange of information among members and to disseminate educational information for the benefit of members and the betterment of the excess and surplus lines industry.²²

Anti-Fraud Reward Program

Section 626.9892, F.S., creates the Anti-Fraud Reward Program within the DFS funded from the Insurance Regulatory Trust Fund. The program allows the DFS to provide rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons convicted of crimes investigated by the Division of Insurance Fraud. The program was established in 1999 and has paid over \$365,000 in rewards.²³

Neutral Evaluators

Sections 627.707-627.7074, F.S., create requirements for the investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional geologist to conduct testing²⁴ to determine the cause of the loss if sinkhole loss is covered under the policy.²⁵ If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.²⁶

²⁰ See s. 626.921(1), F.S.

²¹ See s. 626.921(4), F.S.

²² See s. <http://www.myflsla.com/about/>

²³ See <http://www.myfloridacfo.com/sitePages/agency/dfs.aspx> (last accessed February 11, 2015).

²⁴ s. 627.7072, F.S., contains testing standards in sinkhole claims.

²⁵ s. 627.707(2), F.S.

²⁶ s. 627.707(4)(a), F.S.

Neutral evaluation is available to either party if a sinkhole report has been issued.²⁷ Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs.²⁸ Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.²⁹

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured.³⁰ A request for neutral evaluation is filed with the DFS. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request.³¹ The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization.³² The report is admissible in subsequent court proceedings.³³ Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

Section 627.7074(7), F.S., provides reasons for which a neutral evaluator may be disqualified:

- A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.
- The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.
- The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.
- The proposed neutral evaluator has, within the preceding five years, worked as an employer or employee of any party to the case.

Provisions Related to the State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the CFO as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the DFS, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.³⁴ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

²⁷ s. 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.

²⁸ s. 627.7074(2), F.S.

²⁹ s. 627.7074(3), F.S.

³⁰ s. 627.7074(4), F.S.

³¹ s. 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.

³² ss. 627.7074(5), (12), F.S.

³³ s. 627.7074(13), F.S.

³⁴ s. 633.104, F.S.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code³⁵, which contains fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

III. Effect of Proposed Changes:

Service of Process on the Chief Financial Officer (Sections 1, 9, 10, 11, and 13)

This bill provides an alternative means for plaintiffs to serve process on insurers and other regulated persons. The bill allows the DFS to create an internet-based transmission system to accept service of process by electronic transmission of documents. This will allow plaintiffs to serve documents electronically and allow DFS to remove the requirement that paper documents be served.

Once served, the CFO can mail the documents, send them by some other verifiable means, or make them available by electronic transmission to a secure website established by the DFS. Once documents are made available electronically, the CFO must send notice of receipt to the person designated to receive legal process. The notice must state the date and manner in which the copy of process was made available and contain the uniform resource locator for a hyperlink to access files and information on the Department's website to obtain a copy of the process.

Alternative Retirement Benefits for OPS Employees

Section 2 amends s. 110.1315, F.S., to remove the review and approval duties from the Executive Office of the Governor relating to the alternative retirement income security program for temporary and seasonal employees of the state.

Florida Deferred Compensation Program

Section 3 amends s. 112.215, F.S., to provide that persons employed by a state university, special district, or a water management district are eligible to participate in the deferred compensation program established by the CFO. According the DFS, these employees currently participate in the program but the DFS states that clarification is needed.³⁶

Approval of Bonds (Sections 4 and 7)

Sections 4 and 7 amend ss. 137.09 and 374.983, F.S., to remove the requirement that the DFS approve bonds for county commissioners and commissioners of the Florida Inland Navigation District. The bonds will still be reviewed by the county boards and by the Florida Inland Navigation District.

³⁵ See <http://www.myfloridacfo.com/division/sfm/BFP/FloridaFirePreventionCodePage.htm> (last visited January 14, 2016).

³⁶ See Department of Financial Services, *An Act Relating to the Department of Financial Services* White Paper (on file with the Committee on Banking and Insurance).

Florida Single Audit Act (Section 5)

The bill amends the Florida Single Audit Act to raise the audit threshold from \$500,000 to \$750,000. According to the DFS, the federal single audit threshold was recently raised from \$500,000 to \$750,000. The bill matches the Florida threshold to the federal threshold. Many entities that receive state financial assistance also receive federal financial assistances. This change prevents an entity from having to comply with different audit thresholds.³⁷

The bill creates a new subsection to the Florida Single Audit Act to consolidate the provisions of the Act relating to higher education entities.³⁸ The bill provides that any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance must comply with s. 215.971(1), F.S., (providing that the contract must include provisions relating to scope of work, deliverables, consequences for nonperformance, and return of unused funds) and s. 216.3475, F.S., (limiting payments to the prevailing rate for services). The contract must be in the form or a combination of the following:

- A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

The bill provides that if a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the contracting requirements of the bill.

The bill does not exempt the higher education entity from compliance with maintaining records concerning state financial assistance and does not exempt the entity from laws that allow access and examination of those records by the state awarding agency, the higher education entity, the DFS, or the Auditor General.

Driver Licenses Photographs (Section 6)

This bill amends s. 322.142, F.S., to allow the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code by licensees and by unlicensed persons. For example, this will allow the DFS' Division of Agent and Agency Services to access photographs to aid in the investigation of insurance agents.³⁹

Boiler Regulation (Section 8)

This bill amends s. 509.211, F.S., to remove the reference to a “nationally recognized testing laboratory.” It requires the carbon monoxide detector to be listed complying with ANSI/UL

³⁷ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

³⁸ The bill defines “higher education entity” as a Florida College System institution or a state university.

³⁹ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

2075, Standard for Gas and Vapor Detectors and Sensors by a nationally recognized testing laboratory accredited by the Occupational Safety and Health Administration. The bill requires that the detectors either be integrated to the establishment's fire detection system or connected to the boiler safety circuit such that the boiler does not operate when carbon monoxide is detected.

The bill removes the ability of the Division of State Fire Marshal to determine that some other method has adequately mitigated the risk. It requires the carbon monoxide detectors to meet the statutory requirements.

Public Adjusters (Section 12)

The bill provides that a licensed health insurance agent is not defined as a public adjuster in certain situations. A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

Appointments to the Board of the FLSO (Section 14)

The bill requires that the five members of the Florida Surplus Lines Association regular membership appointed to the FLSO board of governors must be individuals nominated by the Florida Surplus Lines Association.

Anti-Fraud Reward Program (Section 15)

The bill allows the DFS to give rewards under the Anti-Fraud Reward Program to persons who provide information leading to the arrest and conviction of persons who violate statutes currently investigated by the State Fire Marshal. Crimes include making false reports regarding explosives or arson (s. 790.164, F.S.), planting a "hoax" bomb (s. 790.165, F.S.), crimes related to weapons of mass destruction (s. 790.166, F.S.), arson resulting in injury to a firefighter (s. 806.031, F.S.), preventing extinguishment of a fire (s. 806.10, F.S.), crimes relating to fire bombs (s. 806.111), and burning to defraud an insurer (s. 817.233, F.S.).

Neutral Evaluators (Section 16)

The bill provides that a proposed neutral evaluator is disqualified if he or she has, within the preceding five years, worked for the entity that performed the initial sinkhole testing required by s. 627.7072, F.S.

Provisions Related to the State Fire Marshal (Sections 17-24, 26)

Criminal Records of Applicants for Certification

Section 633.412, F.S., provides that a person applying for certification as a firefighter must not have been convicted of a felony, a misdemeanor relating to the certification, a misdemeanor relating to perjury or false statements, or have been dishonorably discharged from the Armed Forces of the United States. Section 15 of the bill creates s. 633.107, F.S., to give the DFS the discretion to grant certificates to some applicants with criminal records if certain conditions are met. The applicant must have paid in full any fee, fine, fund, lien, civil judgment, restitution, cost

of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense. In addition, at least five years must have elapsed since the applicant completed or was released from confinement, supervision, or nonmonetary conditions imposed by the court for a disqualifying offense or at least five years must have elapsed since the applicant was dishonorably discharged from the United States Armed Forces. Once those conditions are met, the applicant must demonstrate by clear and convincing evidence that he or she would not pose a risk to persons or property if licensed or certified. Evidence must include:

- Facts and circumstances surrounding the disqualifying offense;
- The time that has elapsed since the offense;
- The nature of the offense and harm caused to the victim;
- The applicant's history before and after the offense; and
- Any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be licensed or certified.

The bill gives the DFS the discretion whether to grant or deny an exemption. The department must provide its decision to deny the exemption in writing and must state with particularity the reasons for denial. The department's decision is subject to proceedings under chapter 120, F.S., except that a formal proceeding under s. 120.57(1), F.S., is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.⁴⁰

Life Safety Code

Section 19 of this bill provides that the provisions of the Life Safety Code, part of the Florida Fire Prevention Code, do not apply to "newly constructed" one and two-family dwellings. One and two-family dwellings are exempt from the Florida Fire Prevention Code and representatives of the DFS are concerned that the statute could lead to confusion.⁴¹

Firefighter and Volunteer Firefighter Training and Certification

Currently, to work as a firefighter, an individual must hold a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal ("Division").⁴² To obtain a firefighter certificate of compliance, an individual must:

- Satisfactorily complete the Minimum Standards Course⁴³ or have satisfactorily completed training for firefighters in another state which has been determined by the division to be the equivalent of the training required for the Minimum Standards Course.
- Passes the Minimum Standards Course examination.
- Possesses the qualifications in s. 633.412, F.S.:⁴⁴
 - Be a high school graduate
 - Be at least 18 years old
 - Have no felony convictions

⁴⁰ The procedure set forth in this bill is similar to the procedure in s. 435.07, F.S., and discussed in *J.D. v. Florida Department of Children and Families*, 114 So.3d 1127 (Fla. 1st DCA 2013).

⁴¹ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

⁴² See s. 633.416, F.S.

⁴³ This course provides the basic fundamental knowledge and skills to function in a fire fighting environment and consists of at least 398 hours. See <http://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm> (last visited January 14, 2016).

⁴⁴ See s. 633.408(4), F.S.

- Have no misdemeanor convictions relating to the certification or for perjury or false statements
- Be of good moral character
- Be in good physical condition as determined by a division approved physical examination
- Be a nonuser of tobacco or tobacco products for at least year prior to the application

A volunteer firefighter certificate of completion is used for individuals who satisfactorily complete a course established by the division.

Section 21 of the bill requires that an individual seeking a firefighter certificate of compliance must pass the minimum standards course examination within 12 months after completing the required courses. Section 21 also provides that a firefighter certificate of compliance or a volunteer firefighter certificate of completion expires four years after the date of issuance unless renewed.

Section 22 of the bill repeals the requirement of the DFS to suspend or revoke all other certificates an individual holds, if it suspends an individual's certificate.

Retention and Renewal of Certificates

Under current law, s. 633.414, F.S., provides requirements to retain a firefighter certificate of compliance and a volunteer firefighter certificate of completion. In order for a firefighter to retain a certificate of compliance, the firefighter must, every four years:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the division;
- Successfully complete a refresher course consisting of a minimum of 40 hours of training; or
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.

Currently, in order for a volunteer firefighter to retain a volunteer firefighter certificate of completion, the volunteer firefighter must, every four years, be active as a volunteer firefighter or successfully complete a 40 hour refresher course.⁴⁵

Section 23 of the bill requires that the firefighter complete a "Firefighter Retention Refresher Course within six months before the four-year period expires. It further provides that a firefighter or volunteer firefighter certificate expires if the individual does not meet retention requirements. Section 23 provides that the State Fire Marshal may suspend, revoke, or deny a certificate if a reason for denial existed but was not known at the time of issuance, for violations of ch. 633, F.S., or rules or orders of the State Fire Marshal, or falsification of records.

Section 24 of the bill provides that, effective July 1, 2013, an individual who holds a certificate is subject to revocation for:

- A conviction of a misdemeanor relating to the certification or to perjury or false statements;
- A conviction of a felony; or

⁴⁵ See s. 633.414, F.S.

- A dishonorable discharge from the Armed Forces of the United States.

Firefighter Assistance Grant Program (Section 18)

Section 18 of this bill creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.

The program provides financial assistance to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities. The bill requires the division to administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. The division is required to prioritize the annual award of grants to such fire departments and volunteer fire departments demonstrating need as a result of participating in the Florida Fire Service Needs Assessment Survey.

The bill requires the State Fire Marshal to adopt rules for the program that require grant recipients to:

- Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;
- Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536, F.S.;
- Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and
- Meet the definition of the term “fire service provider” in s. 633.102, F.S.

The bill requires that funds be used to:

- Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division’s electronic database;
- Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear; and
- Purchase self-contained breathing apparatus equipment and purchase fire engine pumper apparatus equipment.

Section 26 appropriates \$500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

Rulemaking (Section 25)

The bill provides the DFS rulemaking authority relating to unclaimed property to include property reported to the CFO pursuant to s. 43.19, F.S., relating to unclaimed funds paid to the court; s. 45.032, F.S., relating to the disposition of surplus funds after a judicial sale; s. 732.107, F.S., relating to unclaimed funds in intestate probate proceedings; s. 733.816, F.S., relating to unclaimed funds held by personal representatives in probate proceedings; and s. 744.534, F.S., relating to unclaimed funds in guardianship proceedings.

Effective Date (Section 27)

This bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 992 creates a system for electronic service of process at DFS. This could result in cost savings for plaintiffs who serve documents at the DFS but reduce revenue for process servers who serve pleadings at the DFS office in Tallahassee.

C. Government Sector Impact:

The DFS anticipates a \$54,000 per year recurring savings from reduced postage, printing, and information technology costs due to the changes in the service of process statutes in this bill. Future reductions of two or three OPS positions is anticipated.⁴⁶

⁴⁶ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

The bill appropriates \$500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the newly created Volunteer Firefighter Assistance Grant Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 633.107 and 633.135.

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.1315, 112.215, 137.09, 215.97, 322.142, 374.983, 509.211, 624.307, 624.423, 624.502, 626.854, 626.907, 626.921, 626.9892, 627.7074, 633.208, 633.216, 633.408, 633.412, 633.414, 633.426, and 717.138.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:

The committee substitute:

- Changes the standards for carbon monoxide detectors in public lodging establishments and requires that the detectors be integrated into the establishment's fire detection system or connected to the boiler safety circuit so the boiler is prevented from operating when carbon monoxide is detected.
- Removes a provision that increased certain fees for service of process.
- Revises the definition of public adjuster so that licensed health insurance agents can assist insureds with specified issues.
- Changes the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.
- Requires the award of grants to certain fire departments under the Firefighter Assistance Grant Program be prioritized based on the annual Florida Fire Service Needs Assessment Survey.
- Provides for additional rulemaking authority relating to the Division of Unclaimed Property.
- Appropriates the recurring sum of \$500,000 from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

CS by Banking and Insurance on January 19, 2016:

The committee substitute:

- Maintains current law regarding “for-profit organizations” and the Florida Single Audit Act. The original bill excluded for-profit organizations from the Act.
- Creates a procedure for applicants for certification as firefighters who have been convicted of a felony to obtain certification if they demonstrate by clear and convincing evidence that they would not pose a risk to persons or property if they were granted a certificate.
- Creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.
- Requires the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association’s regular membership but does not provide for nominations.
- Provides discretion for the State Fire Marshal to suspend or revoke other certificates when a firefighter or other certificate holder has a certificate suspended or revoked.
- Removes a provision of the original bill relating to sinkhole insurance.

B. Amendments:

None.



939726

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
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Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 359 - 372
and insert:
carbon monoxide detector ~~sensor~~ devices that are listed as
complying with ANSI/UL 2075, Standard for Gas and Vapor
Detectors and Sensors, by a Nationally Recognized Testing
Laboratory accredited by the Occupational Safety and Health
Administration to list products to that standard ~~bear the label~~
~~of a nationally recognized testing laboratory and have been~~



939726

11 ~~tested and listed as complying with the most recent Underwriters~~
12 ~~Laboratories, Inc., Standard 2034, or its equivalent, unless it~~
13 ~~is determined that carbon monoxide hazards have otherwise been~~
14 ~~adequately mitigated as determined by the Division of State Fire~~
15 ~~Marshal of the Department of Financial Services. Such devices~~
16 must shall be integrated with the public lodging establishment's
17 fire detection system, or connected to the boiler safety circuit
18 and wired so that the boiler is prevented from operating when
19 carbon monoxide is detected until it is reset manually. Any such
20 installation ~~or determination~~ shall be made in accordance with
21 rules adopted by the Division of State Fire Marshal.

22
23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 Delete line 39

26 and insert:

27 to exempt a device from such standards; providing an
28 alternative method of installing such devices;
29 amending s.



893118

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
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Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 434 - 481
and insert:
insurer or on an unauthorized insurer, which fee shall be
deposited into the Administrative Trust Fund.

Section 12. Present paragraph (b) of subsection (2) of
section 626.854, Florida Statutes, is redesignated as paragraph
(c), and a new paragraph (b) is added to that subsection, to
read:



893118

11 626.854 "Public adjuster" defined; prohibitions.—The
12 Legislature finds that it is necessary for the protection of the
13 public to regulate public insurance adjusters and to prevent the
14 unauthorized practice of law.

15 (2) This definition does not apply to:

16 (b) A licensed health insurance agent who assists an
17 insured with coverage questions, medical procedure coding
18 issues, balance billing issues, understanding the claims filing
19 process, or filing a claim, as such assistance relates to
20 coverage under a health insurance policy.

21 Section 13. Subsection (1) of section 626.907, Florida
22 Statutes, is amended to read:

23 626.907 Service of process; judgment by default.—

24 (1) Service of process upon an insurer or person
25 representing or aiding such insurer pursuant to s. 626.906 shall
26 be made by delivering to and leaving with the Chief Financial
27 Officer, his or her assistant or deputy, or another person in
28 charge of the ~~or some person in apparent charge of his or her~~
29 office two copies thereof and the service of process fee as
30 required in s. 624.502. The Chief Financial Officer shall
31 forthwith mail by registered mail, commercial carrier, or any
32 verifiable means, one of the copies of such process to the
33 defendant at the defendant's last known principal place of
34 business as provided by the party submitting the documents and
35 shall keep a record of all process so served upon him or her.
36 The service of process is sufficient, provided notice of such
37 service and a copy of the process are sent within 10 days
38 thereafter by registered mail by plaintiff or plaintiff's
39 attorney to the defendant at the defendant's last known



893118

40 principal place of business, and the defendant's receipt, or
41 receipt issued by the post office with which the letter is
42 registered, showing the name of the sender of the letter and the
43 name and address of the person to whom the letter is addressed,
44 and the affidavit of the plaintiff or plaintiff's attorney
45 showing a compliance herewith are filed with the clerk of the
46 court in which the action is pending on or before the date the
47 defendant is required to appear, or within such further time as
48 the court may allow.

49 Section 14. Paragraph (a) of subsection (4) of section
50 626.921, Florida Statutes, is amended to read:

51 626.921 Florida Surplus Lines Service Office.—

52 (4) The association shall operate under the supervision of
53 a board of governors consisting of:

54 (a) Five individuals nominated by the Florida Surplus Lines
55 Association and appointed by the department from the regular
56 membership of the Florida Surplus Lines Association.

57
58 Each board member shall be appointed to serve beginning on the
59 date designated by the plan of operation and shall serve at the
60 pleasure of the department for a 3-year term, such term
61 initially to be staggered by the plan of operation so that three
62 appointments expire in 1 year, three appointments expire in 2
63 years, and three appointments expire in 3 years. Members may be
64 reappointed for subsequent terms. The board of governors shall
65 elect such officers as may be provided in the plan of operation.

66 Section 15. Subsection (2) of section 626.9892, Florida
67 Statutes, is amended to read:

68 626.9892 Anti-Fraud Reward Program; reporting of insurance



893118

69 fraud.-

70 (2) The department may pay rewards of up to \$25,000 to
71 persons providing information leading to the arrest and
72 conviction of persons committing crimes investigated by the
73 department ~~Division of Insurance Fraud~~ arising from violations
74 of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, s. 790.164,
75 s. 790.165, s. 790.166, s. 806.031, s. 806.10, s. 806.111, s.
76 817.233, or s. 817.234.

77

78 ===== T I T L E A M E N D M E N T =====

79 And the title is amended as follows:

80 Delete lines 49 - 56

81 and insert:

82 unauthorized insurers; amending s. 626.854, F.S.;

83 revising applicability of the definition of the term

84 "public adjuster"; amending s. 626.907, F.S.;

85 requiring a service of process fee for certain service

86 of process made by the Chief Financial Officer;

87 specifying the determination of a defendant's last

88 known principal place of business; amending s.

89 626.921, F.S.; revising membership requirements of the

90 Florida Surplus Lines Service Office board of

91 governors; amending s. 626.9892, F.S.; providing that

92 the department, rather than the Division of Insurance

93 Fraud, investigates certain crimes; adding violations

94 of specified statutes to the Anti-Fraud Reward

95 Program; amending s. 627.7074, F.S.; providing an



246428

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
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Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 579 - 580
and insert:
prioritize the annual award of grants to such combination fire
departments and volunteer fire departments demonstrating need as
a result of participating in the annual Florida Fire Service
Needs Assessment Survey.

===== T I T L E A M E N D M E N T =====



246428

11 And the title is amended as follows:

12 Delete line 73

13 and insert:

14 "combination fire department"; requiring the division
15 to prioritize the annual award of grants to specified
16 fire departments; providing eligibility



689322

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
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Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment (with title amendment)

Between lines 839 and 840

insert:

Section 23. Section 717.138, Florida Statutes, is amended
to read:

717.138 Rulemaking authority.—The department shall
administer and provide for the enforcement of this chapter. The
department has authority to adopt rules pursuant to ss.
120.536(1) and 120.54 to implement the provisions of this



689322

11 chapter. The department may adopt rules to allow for electronic
12 filing of fees, forms, and reports required by this chapter. The
13 authority to adopt rules pursuant to this chapter applies to all
14 unclaimed property reported and remitted to the Chief Financial
15 Officer, including, but not limited to, property reported and
16 remitted pursuant to ss. 43.19, 45.032, 732.107, 733.816, and
17 744.534.

18 Section 24. For the 2016-2017 fiscal year, the sum of
19 \$500,000 in recurring funds from the Insurance Regulatory Trust
20 Fund is appropriated to the Department of Financial Services,
21 and one full-time equivalent position with associated salary
22 rate of 50,000 is authorized, for the purpose of implementing
23 this act.

24
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete line 95

28 and insert:

29 certification under specified circumstances; amending
30 s. 717.138, F.S.; providing applicability for the
31 department's rulemaking authority; providing an
32 appropriation; providing

By the Committee on Banking and Insurance; and Senator Brandes

597-02308-16

2016992c1

1 A bill to be entitled
 2 An act relating to the Department of Financial
 3 Services; amending s. 48.151, F.S.; authorizing the
 4 Department of Financial Services to create an
 5 Internet-based transmission system to accept service
 6 of process; amending s. 110.1315, F.S.; removing a
 7 requirement that the Executive Office of the Governor
 8 review and approve a certain alternative retirement
 9 income security program provided by the department;
 10 amending s. 112.215, F.S.; authorizing the Chief
 11 Financial Officer, with the approval of the State
 12 Board of Administration, to include specified
 13 employees other than state employees in a deferred
 14 compensation plan; conforming a provision to a change
 15 made by the act; amending s. 137.09, F.S.; removing a
 16 requirement that the department approve certain bonds
 17 of county officers; amending s. 215.97, F.S.; revising
 18 and providing definitions; increasing the amount of a
 19 certain audit threshold; exempting specified higher
 20 education entities from certain audit requirements;
 21 revising the requirements for state-funded contracts
 22 or agreements between a state awarding agency and a
 23 higher education entity; providing an exception;
 24 providing applicability; conforming provisions to
 25 changes made by the act; amending s. 322.142, F.S.;
 26 authorizing the Department of Highway Safety and Motor
 27 Vehicles to provide certain driver license images to
 28 the Department of Financial Services for the purpose
 29 of investigating allegations of violations of the
 30 insurance code; amending s. 374.983, F.S.; naming the
 31 Board of Commissioners of the Florida Inland
 32 Navigation District, rather than the Chief Financial

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

597-02308-16

2016992c1

33 Officer, as the entity that receives and approves
 34 certain surety bonds of commissioners; amending s.
 35 509.211, F.S.; revising certain standards for carbon
 36 monoxide detector devices in specified spaces or rooms
 37 of public lodging establishments; deleting a provision
 38 authorizing the State Fire Marshal of the department
 39 to exempt a device from such standards; amending s.
 40 624.307, F.S.; conforming provisions to changes made
 41 by the act; specifying requirements for the Chief
 42 Financial Officer in providing notice of electronic
 43 transmission of process documents; amending s.
 44 624.423, F.S.; authorizing service of process by
 45 specified means; reenacting and amending s. 624.502,
 46 F.S.; specifying fees to be paid by the requestor to
 47 the department or Office of Insurance Regulation for
 48 certain service of process on authorized and
 49 unauthorized insurers; amending s. 626.907, F.S.;
 50 requiring a service of process fee for certain service
 51 of process made by the Chief Financial Officer;
 52 specifying the determination of a defendant's last
 53 known principal place of business; amending s.
 54 626.921, F.S.; revising membership requirements of the
 55 Florida Surplus Lines Service Office board of
 56 governors; amending s. 627.7074, F.S.; providing an
 57 additional ground for disqualifying a neutral
 58 evaluator for disputed sinkhole insurance claims;
 59 creating s. 633.107, F.S.; authorizing the department
 60 to grant exemptions from disqualification for
 61 licensure or certification by the Division of State

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2016992c1

62 Fire Marshal under certain circumstances; specifying
 63 the information an applicant must provide; providing
 64 the manner in which the department must render its
 65 decision to grant or deny an exemption; providing
 66 procedures for an applicant to contest the decision;
 67 providing an exception from certain requirements;
 68 authorizing the division to adopt rules; creating s.
 69 633.135, F.S.; establishing the Firefighter Assistance
 70 Program for certain purposes; requiring the division
 71 to administer the program and annually award grants to
 72 qualifying fire departments; defining the term
 73 "combination fire department"; providing eligibility
 74 requirements; requiring the State Fire Marshal to
 75 adopt rules and procedures; providing program
 76 requirements; amending s. 633.208, F.S.; revising
 77 applicability of the Life Safety Code to exclude one-
 78 family and two-family dwellings, rather than only such
 79 dwellings that are newly constructed; amending s.
 80 633.216, F.S.; conforming a cross-reference; amending
 81 s. 633.408, F.S.; revising firefighter and volunteer
 82 firefighter certification requirements; specifying the
 83 duration of certain firefighter certifications;
 84 amending s. 633.412, F.S.; deleting a requirement that
 85 the division suspend or revoke all issued certificates
 86 if an individual's certificate is suspended or
 87 revoked; amending s. 633.414, F.S.; conforming
 88 provisions to changes made by the act; revising
 89 alternative requirements for renewing specified
 90 certifications; providing grounds for denial of, or

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91 disciplinary action against, certifications for a
 92 firefighter or volunteer firefighter; amending s.
 93 633.426, F.S.; revising a definition; providing a date
 94 after which an individual is subject to revocation of
 95 certification under specified circumstances; providing
 96 an effective date.

98 Be It Enacted by the Legislature of the State of Florida:
 99

100 Section 1. Subsection (3) of section 48.151, Florida
 101 Statutes, is amended to read:

102 48.151 Service on statutory agents for certain persons.—

103 (3) The Chief Financial Officer or his or her assistant or
 104 deputy or another person in charge of the office is the agent
 105 for service of process on all insurers applying for authority to
 106 transact insurance in this state, all licensed nonresident
 107 insurance agents, all nonresident disability insurance agents
 108 licensed pursuant to s. 626.835, any unauthorized insurer under
 109 s. 626.906 or s. 626.937, domestic reciprocal insurers,
 110 fraternal benefit societies under chapter 632, warranty
 111 associations under chapter 634, prepaid limited health service
 112 organizations under chapter 636, and persons required to file
 113 statements under s. 628.461. As an alternative to service of
 114 process made by mail or personal service on the Chief Financial
 115 Officer, on his or her assistant or deputy, or on another person
 116 in charge of the office, the Department of Financial Services
 117 may create an Internet-based transmission system to accept
 118 service of process by electronic transmission of documents.

119 Section 2. Subsection (1) of section 110.1315, Florida

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120 Statutes, is amended to read:

121 110.1315 Alternative retirement benefits; other-personal-
122 services employees.-

123 (1) ~~Upon review and approval by the Executive Office of the~~
124 ~~Governor,~~ The Department of Financial Services shall provide an
125 alternative retirement income security program for eligible
126 temporary and seasonal employees of the state who are
127 compensated from appropriations for other personal services. The
128 Department of Financial Services may contract with a private
129 vendor or vendors to administer the program under a defined-
130 contribution plan under ss. 401(a) and 403(b) or s. 457 of the
131 Internal Revenue Code, and the program must provide retirement
132 benefits as required under s. 3121(b)(7)(F) of the Internal
133 Revenue Code. The Department of Financial Services may develop a
134 request for proposals and solicit qualified vendors to compete
135 for the award of the contract. A vendor shall be selected on the
136 basis of the plan that best serves the interest of the
137 participating employees and the state. The proposal must comply
138 with all necessary federal and state laws and rules.

139 Section 3. Paragraph (a) of subsection (4) and subsection
140 (12) of section 112.215, Florida Statutes, are amended to read:

141 112.215 Government employees; deferred compensation
142 program.-

143 (4)(a) The Chief Financial Officer, with the approval of
144 the State Board of Administration, shall establish such plan or
145 plans of deferred compensation for state employees and may
146 include persons employed by a state university as defined in s.
147 1000.21, a special district as defined in s. 189.012, or a water
148 management district as defined in s. 189.012, including all such

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149 investment vehicles or products incident thereto, as may be
150 available through, or offered by, qualified companies or
151 persons, and may approve one or more such plans for
152 implementation by and on behalf of the state and its agencies
153 and employees.

154 (12) The Chief Financial Officer may adopt any rule
155 necessary to administer and implement this act with respect to
156 deferred compensation plans for state employees and persons
157 employed by a state university as defined in s. 1000.21, a
158 special district as defined in s. 189.012, or a water management
159 district as defined in s. 189.012.

160 Section 4. Section 137.09, Florida Statutes, is amended to
161 read:

162 137.09 Justification and approval of bonds.-Each surety
163 upon every bond of any county officer shall make affidavit that
164 he or she is a resident of the county for which the officer is
165 to be commissioned, and that he or she has sufficient visible
166 property therein unencumbered and not exempt from sale under
167 legal process to make good his or her bond. Every such bond
168 shall be approved by the board of county commissioners ~~and by~~
169 ~~the Department of Financial Services~~ when the board is ~~they and~~
170 ~~it~~ are satisfied in ~~its~~ ~~their~~ judgment that the bond ~~same~~ is
171 legal, sufficient, and proper to be approved.

172 Section 5. Present paragraphs (h) through (y) of subsection
173 (2) of section 215.97, Florida Statutes, are redesignated as
174 paragraphs (i) through (z), respectively, a new paragraph (h) is
175 added to that subsection, paragraph (a) and present paragraphs
176 (m) and (v) of that subsection and paragraph (o) of subsection
177 (8) are amended, present subsections (9), (10), and (11) of that

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178 section are renumbered as subsections (10), (11), and (12),
179 respectively, and a new subsection (9) is added to that section,
180 to read:

181 215.97 Florida Single Audit Act.-

182 (2) ~~Definitions~~, As used in this section, the term:

183 (a) "Audit threshold" means the threshold amount used to
184 determine when a state single audit or project-specific audit of
185 a nonstate entity shall be conducted in accordance with this
186 section. Each nonstate entity that expends a total amount of
187 state financial assistance equal to or in excess of \$750,000
188 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be
189 required to have a state single audit, or a project-specific
190 audit, for such fiscal year in accordance with the requirements
191 of this section. Every 2 years the Auditor General, after
192 consulting with the Executive Office of the Governor, the
193 Department of Financial Services, and all state awarding
194 agencies, shall review the threshold amount for requiring audits
195 under this section and may adjust such threshold amount
196 consistent with the purposes of this section.

197 (h) "Higher education entity" means a Florida College
198 System institution or a state university, as those terms are
199 defined in s. 1000.21.

200 (n) ~~(m)~~ "Nonstate entity" means a local governmental entity,
201 higher education entity, nonprofit organization, or for-profit
202 organization that receives state financial assistance.

203 (w) ~~(v)~~ "State project-specific audit" means an audit of one
204 state project performed in accordance with the requirements of
205 subsection (11) ~~(10)~~.

206 (8) Each recipient or subrecipient of state financial

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207 assistance shall comply with the following:

208 (c) A higher education entity is exempt from the
209 requirements of paragraph (2) (a) and this subsection A contract
210 involving the State University System or the Florida College
211 System funded by state financial assistance may be in the form
212 of:

213 1. A fixed-price contract that entitles the provider to
214 receive full compensation for the fixed contract amount upon
215 completion of all contract deliverables;

216 2. A fixed-rate-per-unit contract that entitles the
217 provider to receive compensation for each contract deliverable
218 provided;

219 3. A cost reimbursable contract that entitles the provider
220 to receive compensation for actual allowable costs incurred in
221 performing contract deliverables; or

222 4. A combination of the contract forms described in
223 subparagraphs 1., 2., and 3.

224 (9) This subsection applies to any contract or agreement
225 between a state awarding agency and a higher education entity
226 that is funded by state financial assistance.

227 (a) The contract or agreement must comply with ss.
228 215.971(1) and 216.3475 and must be in the form of one or a
229 combination of the following:

230 1. A fixed-price contract that entitles the provider to
231 receive compensation for the fixed contract amount upon
232 completion of all contract deliverables.

233 2. A fixed-rate-per-unit contract that entitles the
234 provider to receive compensation for each contract deliverable
235 provided.

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236 3. A cost-reimbursable contract that entitles the provider
 237 to receive compensation for actual allowable costs incurred in
 238 performing contract deliverables.

239 (b) If a higher education entity has extremely limited or
 240 no required activities related to the administration of a state
 241 project and acts only as a conduit of state financial
 242 assistance, none of the requirements of this section apply to
 243 the conduit higher education entity. However, the subrecipient
 244 that is provided state financial assistance by the conduit
 245 higher education entity is subject to the requirements of this
 246 subsection and subsection (8).

247 (c) Regardless of the amount of the state financial
 248 assistance, this subsection does not exempt a higher education
 249 entity from compliance with provisions of law that relate to
 250 maintaining records concerning state financial assistance to the
 251 higher education entity or that allow access and examination of
 252 those records by the state awarding agency, the higher education
 253 entity, the Department of Financial Services, or the Auditor
 254 General.

255 (d) This subsection does not prohibit the state awarding
 256 agency from including terms and conditions in the contract or
 257 agreement which require additional assurances that the state
 258 financial assistance meets the applicable requirements of laws,
 259 regulations, and other compliance rules.

260 Section 6. Subsection (4) of section 322.142, Florida
 261 Statutes, is amended to read:

262 322.142 Color photographic or digital imaged licenses.—

263 (4) The department may maintain a film negative or print
 264 file. The department shall maintain a record of the digital

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265 image and signature of the licensees, together with other data
 266 required by the department for identification and retrieval.
 267 Reproductions from the file or digital record are exempt from
 268 the provisions of s. 119.07(1) and may be made and issued only:

269 (a) For departmental administrative purposes;

270 (b) For the issuance of duplicate licenses;

271 (c) In response to law enforcement agency requests;

272 (d) To the Department of Business and Professional

273 Regulation and the Department of Health pursuant to an
 274 interagency agreement for the purpose of accessing digital
 275 images for reproduction of licenses issued by the Department of
 276 Business and Professional Regulation or the Department of
 277 Health;

278 (e) To the Department of State pursuant to an interagency
 279 agreement to facilitate determinations of eligibility of voter
 280 registration applicants and registered voters in accordance with
 281 ss. 98.045 and 98.075;

282 (f) To the Department of Revenue pursuant to an interagency
 283 agreement for use in establishing paternity and establishing,
 284 modifying, or enforcing support obligations in Title IV-D cases;

285 (g) To the Department of Children and Families pursuant to
 286 an interagency agreement to conduct protective investigations
 287 under part III of chapter 39 and chapter 415;

288 (h) To the Department of Children and Families pursuant to
 289 an interagency agreement specifying the number of employees in
 290 each of that department's regions to be granted access to the
 291 records for use as verification of identity to expedite the
 292 determination of eligibility for public assistance and for use
 293 in public assistance fraud investigations;

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294 (i) To the Agency for Health Care Administration pursuant
 295 to an interagency agreement for the purpose of authorized
 296 agencies verifying photographs in the Care Provider Background
 297 Screening Clearinghouse authorized under s. 435.12;

298 (j) To the Department of Financial Services pursuant to an
 299 interagency agreement to facilitate the location of owners of
 300 unclaimed property, the validation of unclaimed property claims,
 301 ~~and~~ the identification of fraudulent or false claims, and the
 302 investigation of allegations of violations of the insurance code
 303 by licensees and unlicensed persons;

304 (k) To district medical examiners pursuant to an
 305 interagency agreement for the purpose of identifying a deceased
 306 individual, determining cause of death, and notifying next of
 307 kin of any investigations, including autopsies and other
 308 laboratory examinations, authorized in s. 406.11; or

309 (l) To the following persons for the purpose of identifying
 310 a person as part of the official work of a court:

311 1. A justice or judge of this state;

312 2. An employee of the state courts system who works in a
 313 position that is designated in writing for access by the Chief
 314 Justice of the Supreme Court or a chief judge of a district or
 315 circuit court, or by his or her designee; or

316 3. A government employee who performs functions on behalf
 317 of the state courts system in a position that is designated in
 318 writing for access by the Chief Justice or a chief judge, or by
 319 his or her designee.

320 Section 7. Subsection (2) of section 374.983, Florida
 321 Statutes, is amended to read:

322 374.983 Governing body.—

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323 (2) The present board of commissioners of the district
 324 shall continue to hold office until their respective terms shall
 325 expire. Thereafter the members of the board shall continue to be
 326 appointed by the Governor for a term of 4 years and until their
 327 successors shall be duly appointed. Specifically, commencing on
 328 January 10, 1997, the Governor shall appoint the commissioners
 329 from Broward, Indian River, Martin, St. Johns, and Volusia
 330 Counties and on January 10, 1999, the Governor shall appoint the
 331 commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm
 332 Beach, and St. Lucie Counties. The Governor shall appoint the
 333 commissioner from Nassau County for an initial term that
 334 coincides with the period remaining in the current terms of the
 335 commissioners from Broward, Indian River, Martin, St. Johns, and
 336 Volusia Counties. Thereafter, the commissioner from Nassau
 337 County shall be appointed to a 4-year term. Each new appointee
 338 must be confirmed by the Senate. Whenever a vacancy occurs among
 339 the commissioners, the person appointed to fill such vacancy
 340 shall hold office for the unexpired portion of the term of the
 341 commissioner whose place he or she is selected to fill. Each
 342 commissioner under this act before he or she assumes office
 343 shall be required to give a good and sufficient surety bond in
 344 the sum of \$10,000 payable to the Governor and his or her
 345 successors in office, conditioned upon the faithful performance
 346 of the duties of his or her office, such bond to be approved by
 347 and filed with the board of commissioners of the district ~~Chief~~
 348 ~~Financial Officer~~. Any and all premiums upon such surety bonds
 349 shall be paid by the board of commissioners of such district as
 350 a necessary expense of the district.

351 Section 8. Subsection (4) of section 509.211, Florida

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352 Statutes, is amended to read:

353 509.211 Safety regulations.—

354 (4) Every enclosed space or room that contains a boiler
 355 regulated under chapter 554 which is fired by the direct
 356 application of energy from the combustion of fuels and that is
 357 located in any portion of a public lodging establishment that
 358 also contains sleeping rooms shall be equipped with one or more
 359 carbon monoxide ~~detector sensor~~ devices that bear the
 360 certification mark from a testing and certification organization
 361 accredited in accordance with ISO/IEC Guide 65, General
 362 Requirements for Bodies Operating Product Certification Systems,
 363 label of a nationally recognized testing laboratory and that
 364 have been tested and listed as complying with the most recent
 365 Underwriters Laboratories, Inc., Standard 2075 2034, or its
 366 equivalent, unless it is determined that carbon monoxide hazards
 367 have otherwise been adequately mitigated as determined by the
 368 Division of State Fire Marshal of the Department of Financial
 369 Services. Such devices shall be integrated with the public
 370 lodging establishment's fire detection system. Any such
 371 installation or determination shall be made in accordance with
 372 rules adopted by the Division of State Fire Marshal.

373 Section 9. Subsection (9) of section 624.307, Florida
 374 Statutes, is amended to read:

375 624.307 General powers; duties.—

376 (9) Upon receiving service of legal process issued in any
 377 civil action or proceeding in this state against any regulated
 378 person or any unauthorized insurer under s. 626.906 or s.
 379 626.937 which is required to appoint the Chief Financial Officer
 380 as its attorney to receive service of all legal process, the

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381 Chief Financial Officer, as attorney, may, in lieu of sending
 382 the process by registered or certified mail, send the process or
 383 make it available by any other verifiable means, including, but
 384 not limited to, making the documents available by electronic
 385 transmission from a secure website established by the department
 386 to the person last designated by the regulated person or the
 387 unauthorized insurer to receive the process. When process
 388 documents are made available electronically, the Chief Financial
 389 Officer shall send a notice of receipt of service of process to
 390 the person last designated by the regulated person or
 391 unauthorized insurer to receive legal process. The notice must
 392 state the date and manner in which the copy of the process was
 393 made available to the regulated person or unauthorized insurer
 394 being served and contain the uniform resource locator (URL) for
 395 a hyperlink to access files and information on the department's
 396 website to obtain a copy of the process.

397 Section 10. Section 624.423, Florida Statutes, is amended
 398 to read:

399 624.423 Serving process.—

400 (1) Service of process upon the Chief Financial Officer as
 401 process agent of the insurer ~~under ss. 624.422 and 626.937~~
 402 shall be made by serving a copy of the process upon the Chief
 403 Financial Officer or upon her or his assistant, deputy, or other
 404 person in charge of her or his office. Service may also be made
 405 by mail or electronically as provided in s. 48.151. Upon
 406 receiving such service, the Chief Financial Officer shall retain
 407 a record copy and promptly forward one copy of the process by
 408 registered or certified mail or by other verifiable means, as
 409 provided under s. 624.307(9), to the person last designated by

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410 the insurer to receive the same, as provided under s.

411 624.422(2). For purposes of this section, records may be
412 retained as paper or electronic copies.

413 (2) ~~If where~~ process is served upon the Chief Financial
414 Officer as an insurer's process agent, the insurer ~~is shall~~ not
415 ~~be~~ required to answer or plead except within 20 days after the
416 date upon which the Chief Financial Officer sends or makes
417 available by other verifiable means ~~mailed~~ a copy of the process
418 served upon her or him as required by subsection (1).

419 (3) Process served upon the Chief Financial Officer and
420 sent or made available in accordance with this section and s.
421 624.307(9) copy thereof forwarded as in this section provided
422 shall for all purposes constitute valid and binding service
423 thereof upon the insurer.

424 Section 11. Notwithstanding the expiration date in section
425 41 of chapter 2015-222, Laws of Florida, section 624.502,
426 Florida Statutes, as amended by chapter 2013-41, Laws of
427 Florida, is reenacted and amended to read:

428 624.502 Service of process fee.—In all instances as
429 provided in any section of the insurance code and s. 48.151(3)
430 in which service of process is authorized to be made upon the
431 Chief Financial Officer or the director of the office, the party
432 requesting service ~~plaintiff~~ shall pay to the department or
433 office a fee of \$15 for such service of process on an authorized
434 insurer or \$25 for such service of process on an unauthorized
435 insurer, which fee shall be deposited into the Administrative
436 Trust Fund.

437 Section 12. Subsection (1) of section 626.907, Florida
438 Statutes, is amended to read:

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439 626.907 Service of process; judgment by default.—

440 (1) Service of process upon an insurer or person
441 representing or aiding such insurer pursuant to s. 626.906 shall
442 be made by delivering to and leaving with the Chief Financial
443 Officer, his or her assistant or deputy, or another person in
444 charge of the ~~or some person in apparent charge of his or her~~
445 office two copies thereof and the service of process fee as
446 required in s. 624.502. The Chief Financial Officer shall
447 forthwith mail by registered mail, commercial carrier, or any
448 verifiable means, one of the copies of such process to the
449 defendant at the defendant's last known principal place of
450 business as provided by the party submitting the documents and
451 shall keep a record of all process so served upon him or her.
452 The service of process is sufficient, provided notice of such
453 service and a copy of the process are sent within 10 days
454 thereafter by registered mail by plaintiff or plaintiff's
455 attorney to the defendant at the defendant's last known
456 principal place of business, and the defendant's receipt, or
457 receipt issued by the post office with which the letter is
458 registered, showing the name of the sender of the letter and the
459 name and address of the person to whom the letter is addressed,
460 and the affidavit of the plaintiff or plaintiff's attorney
461 showing a compliance herewith are filed with the clerk of the
462 court in which the action is pending on or before the date the
463 defendant is required to appear, or within such further time as
464 the court may allow.

465 Section 13. Paragraph (a) of subsection (4) of section
466 626.921, Florida Statutes, is amended to read:

467 626.921 Florida Surplus Lines Service Office.—

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468 (4) The association shall operate under the supervision of
469 a board of governors consisting of:

470 (a) Five individuals nominated by the Florida Surplus Lines
471 Association and appointed by the department from the regular
472 membership of the Florida Surplus Lines Association.

473
474 Each board member shall be appointed to serve beginning on the
475 date designated by the plan of operation and shall serve at the
476 pleasure of the department for a 3-year term, such term
477 initially to be staggered by the plan of operation so that three
478 appointments expire in 1 year, three appointments expire in 2
479 years, and three appointments expire in 3 years. Members may be
480 reappointed for subsequent terms. The board of governors shall
481 elect such officers as may be provided in the plan of operation.

482 Section 14. Paragraph (a) of subsection (7) of section
483 627.7074, Florida Statutes, is amended to read:

484 627.7074 Alternative procedure for resolution of disputed
485 sinkhole insurance claims.—

486 (7) Upon receipt of a request for neutral evaluation, the
487 department shall provide the parties a list of certified neutral
488 evaluators. The department shall allow the parties to submit
489 requests to disqualify evaluators on the list for cause.

490 (a) The department shall disqualify neutral evaluators for
491 cause based only on any of the following grounds:

492 1. A familial relationship within the third degree exists
493 between the neutral evaluator and either party or a
494 representative of either party.

495 2. The proposed neutral evaluator has, in a professional
496 capacity, previously represented either party or a

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497 representative of either party in the same or a substantially
498 related matter.

499 3. The proposed neutral evaluator has, in a professional
500 capacity, represented another person in the same or a
501 substantially related matter and that person's interests are
502 materially adverse to the interests of the parties. The term
503 "substantially related matter" means participation by the
504 neutral evaluator on the same claim, property, or adjacent
505 property.

506 4. The proposed neutral evaluator has, within the preceding
507 5 years, worked as an employer or employee of any party to the
508 case.

509 5. The proposed neutral evaluator has, within the preceding
510 5 years, worked for any entity that performed any sinkhole loss
511 testing, review, or analysis for the property.

512 Section 15. Section 633.107, Florida Statutes, is created
513 to read:

514 633.107 Exemption from disqualification from licensure or
515 certification.—

516 (1) The department may grant an exemption from
517 disqualification to any person disqualified from licensure or
518 certification by the Division of State Fire Marshal under this
519 chapter because of a criminal record or dishonorable discharge
520 from the United States Armed Forces if the applicant has paid in
521 full any fee, fine, fund, lien, civil judgment, restitution,
522 cost of prosecution, or trust contribution imposed by the court
523 as part of the judgment and sentence for any disqualifying
524 offense and:

525 (a) At least 5 years have elapsed since the applicant

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526 completed or has been lawfully released from confinement,
 527 supervision, or nonmonetary condition imposed by the court for a
 528 disqualifying offense; or

529 (b) At least 5 years have elapsed since the applicant was
 530 dishonorably discharged from the United States Armed Forces.

531 (2) For the department to grant an exemption, the applicant
 532 must clearly and convincingly demonstrate that he or she would
 533 not pose a risk to persons or property if permitted to be
 534 licensed or certified under this chapter, evidence of which must
 535 include, but need not be limited to, facts and circumstances
 536 surrounding the disqualifying offense, the time that has elapsed
 537 since the offense, the nature of the offense and harm caused to
 538 the victim, the applicant's history before and after the
 539 offense, and any other evidence or circumstances indicating that
 540 the applicant will not present a danger if permitted to be
 541 licensed or certified.

542 (3) The department has discretion whether to grant or deny
 543 an exemption. The department shall provide its decision in
 544 writing which, if the exemption is denied, must state with
 545 particularity the reasons for denial. The department's decision
 546 is subject to proceedings under chapter 120, except that a
 547 formal proceeding under s. 120.57(1) is available only if there
 548 are disputed issues of material fact that the department relied
 549 upon in reaching its decision.

550 (4) An applicant may request an exemption, notwithstanding
 551 the time limitations of paragraphs (1)(a) and (b), if by
 552 executive clemency his or her civil rights are restored, or he
 553 or she receives a pardon, from the disqualifying offense. The
 554 fact that the applicant receives executive clemency does not

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555 alleviate his or her obligation to comply with subsection (2) or
 556 in itself require the department to award the exemption.

557 (5) The division may adopt rules to administer this
 558 section.

559 Section 16. Section 633.135, Florida Statutes, is created
 560 to read:

561 633.135 Firefighter Assistance Grant Program.—

562 (1) The Firefighter Assistance Grant Program is created
 563 within the division to improve the emergency response capability
 564 of volunteer fire departments and combination fire departments.
 565 The program shall provide financial assistance to improve
 566 firefighter safety and enable such fire departments to provide
 567 firefighting, emergency medical, and rescue services to their
 568 communities. For purposes of this section, the term "combination
 569 fire department" means a fire department composed of a
 570 combination of career and volunteer firefighters.

571 (2) The division shall administer the program and annually
 572 award grants to volunteer fire departments and combination fire
 573 departments using the annual Florida Fire Service Needs
 574 Assessment Survey. The purpose of the grants is to assist such
 575 fire departments in providing volunteer firefighter training and
 576 procuring necessary firefighter personal protective equipment,
 577 self-contained breathing apparatus equipment, and fire engine
 578 pumper apparatus equipment. However, the division shall
 579 prioritize the annual award of grants to such fire departments
 580 in a county having a population of 75,000 or less.

581 (3) The State Fire Marshal shall adopt rules and procedures
 582 for the program that require grant recipients to:

583 (a) Report their activity to the division for submission in

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584 the Fire and Emergency Incident Information Reporting System
 585 created pursuant to s. 633.136;
 586 (b) Annually complete and submit the Florida Fire Service
 587 Needs Assessment Survey to the division;
 588 (c) Comply with the Florida Firefighters Occupational
 589 Safety and Health Act, ss. 633.502-633.536;
 590 (d) Comply with any other rule determined by the State Fire
 591 Marshal to effectively and efficiently implement, administer,
 592 and manage the program; and
 593 (e) Meet the definition of the term "fire service provider"
 594 in s. 633.102.
 595 (4) Funds shall be used to:
 596 (a) Provide firefighter training to individuals to obtain a
 597 Volunteer Firefighter Certificate of Completion pursuant to s.
 598 633.408. Training must be provided at no cost to the fire
 599 department or student by a division-approved instructor and must
 600 be documented in the division's electronic database.
 601 (b) Purchase firefighter personal protective equipment,
 602 including structural firefighting protective ensembles and
 603 individual ensemble elements such as garments, helmets, gloves,
 604 and footwear, that complies with NFPA No. 1851, "Standard on
 605 Selection, Care, and Maintenance of Protective Ensembles for
 606 Structural Fire Fighting and Proximity Fire Fighting," by the
 607 National Fire Protection Association.
 608 (c) Purchase self-contained breathing apparatus equipment
 609 that complies with NFPA No. 1852, "Standard on Selection, Care,
 610 and Maintenance of Open-Circuit Self-Contained Breathing
 611 Apparatus."
 612 (d) Purchase fire engine pumper apparatus equipment. Funds

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613 provided under this paragraph may be used to purchase the
 614 equipment or subsidize a federal grant from the Federal
 615 Emergency Management Agency to purchase the equipment.
 616 Section 17. Subsection (8) of section 633.208, Florida
 617 Statutes, is amended to read:
 618 633.208 Minimum firesafety standards.—
 619 (8) The provisions of the Life Safety Code, as contained in
 620 the Florida Fire Prevention Code, do not apply to ~~newly~~
 621 ~~constructed~~ one-family and two-family dwellings. However, fire
 622 sprinkler protection may be permitted by local government in
 623 lieu of other fire protection-related development requirements
 624 for such structures. While local governments may adopt fire
 625 sprinkler requirements for one- and two-family dwellings under
 626 this subsection, it is the intent of the Legislature that the
 627 economic consequences of the fire sprinkler mandate on home
 628 owners be studied before the enactment of such a requirement.
 629 After the effective date of this act, any local government that
 630 desires to adopt a fire sprinkler requirement on one- or two-
 631 family dwellings must prepare an economic cost and benefit
 632 report that analyzes the application of fire sprinklers to one-
 633 or two-family dwellings or any proposed residential subdivision.
 634 The report must consider the tradeoffs and specific cost savings
 635 and benefits of fire sprinklers for future owners of property.
 636 The report must include an assessment of the cost savings from
 637 any reduced or eliminated impact fees if applicable, the
 638 reduction in special fire district tax, insurance fees, and
 639 other taxes or fees imposed, and the waiver of certain
 640 infrastructure requirements including the reduction of roadway
 641 widths, the reduction of water line sizes, increased fire

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642 hydrant spacing, increased dead-end roadway length, and a
 643 reduction in cul-de-sac sizes relative to the costs from fire
 644 sprinkling. A failure to prepare an economic report shall result
 645 in the invalidation of the fire sprinkler requirement to any
 646 one- or two-family dwelling or any proposed subdivision. In
 647 addition, a local jurisdiction or utility may not charge any
 648 additional fee, above what is charged to a non-fire sprinklered
 649 dwelling, on the basis that a one- or two-family dwelling unit
 650 is protected by a fire sprinkler system.

651 Section 18. Subsection (2) of section 633.216, Florida
 652 Statutes, is amended to read:

653 633.216 Inspection of buildings and equipment; orders;
 654 firesafety inspection training requirements; certification;
 655 disciplinary action.—The State Fire Marshal and her or his
 656 agents or persons authorized to enforce laws and rules of the
 657 State Fire Marshal shall, at any reasonable hour, when the State
 658 Fire Marshal has reasonable cause to believe that a violation of
 659 this chapter or s. 509.215, or a rule adopted thereunder, or a
 660 minimum firesafety code adopted by the State Fire Marshal or a
 661 local authority, may exist, inspect any and all buildings and
 662 structures which are subject to the requirements of this chapter
 663 or s. 509.215 and rules adopted thereunder. The authority to
 664 inspect shall extend to all equipment, vehicles, and chemicals
 665 which are located on or within the premises of any such building
 666 or structure.

667 (2) Except as provided in s. 633.312(2), every firesafety
 668 inspection conducted pursuant to state or local firesafety
 669 requirements shall be by a person certified as having met the
 670 inspection training requirements set by the State Fire Marshal.

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671 Such person shall meet the requirements of s. 633.412(1)-(4) ~~or~~
 672 ~~633.412(1)(a)-(d)~~, and:

673 (a) Have satisfactorily completed the firesafety inspector
 674 certification examination as prescribed by division rule; and

675 (b)1. Have satisfactorily completed, as determined by
 676 division rule, a firesafety inspector training program of at
 677 least 200 hours established by the department and administered
 678 by education or training providers approved by the department
 679 for the purpose of providing basic certification training for
 680 firesafety inspectors; or

681 2. Have received training in another state which is
 682 determined by the division to be at least equivalent to that
 683 required by the department for approved firesafety inspector
 684 education and training programs in this state.

685 Section 19. Paragraph (b) of subsection (4) and subsection
 686 (8) of section 633.408, Florida Statutes, are amended, and
 687 subsection (9) is added to that section, to read:

688 633.408 Firefighter and volunteer firefighter training and
 689 certification.—

690 (4) The division shall issue a firefighter certificate of
 691 compliance to an individual who does all of the following:

692 (b) Passes the Minimum Standards Course examination within
 693 12 months after completing the required courses.

694 (8) (a) Pursuant to s. 590.02(1)(e), the division shall
 695 establish a structural fire training program of not less than
 696 206 hours. The division shall issue to a person satisfactorily
 697 complying with this training program and who has successfully
 698 passed an examination as prescribed by the division and who has
 699 met the requirements of s. 590.02(1)(e), a Forestry Certificate

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700 of Compliance.

701 (b) An individual who holds a current and valid Forestry
702 Certificate of Compliance is entitled to the same rights,
703 privileges, and benefits provided for by law as a firefighter.

704 (9) A Firefighter Certificate of Compliance or a Volunteer
705 Firefighter Certificate of Completion issued under this section
706 expires 4 years after the date of issuance unless renewed as
707 provided in s. 633.414.

708 Section 20. Section 633.412, Florida Statutes, is amended
709 to read:

710 633.412 Firefighters; qualifications for certification.—

711 ~~(1)~~ A person applying for certification as a firefighter
712 must:

713 (1)(a) Be a high school graduate or the equivalent, as the
714 term may be determined by the division, and at least 18 years of
715 age.

716 (2)(b) Not have been convicted of a misdemeanor relating to
717 the certification or to perjury or false statements, or a felony
718 or a crime punishable by imprisonment of 1 year or more under
719 the law of the United States or of any state thereof or under
720 the law of any other country, or dishonorably discharged from
721 any of the Armed Forces of the United States. "Convicted" means
722 a finding of guilt or the acceptance of a plea of guilty or nolo
723 contendere, in any federal or state court or a court in any
724 other country, without regard to whether a judgment of
725 conviction has been entered by the court having jurisdiction of
726 the case.

727 (3)(e) Submit a set of fingerprints to the division with a
728 current processing fee. The fingerprints will be forwarded to

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729 the Department of Law Enforcement for state processing and
730 forwarded by the Department of Law Enforcement to the Federal
731 Bureau of Investigation for national processing.

732 ~~(4)(d)~~ Have a good moral character as determined by
733 investigation under procedure established by the division.

734 (5)(e) Be in good physical condition as determined by a
735 medical examination given by a physician, surgeon, or physician
736 assistant licensed to practice in the state pursuant to chapter
737 458; an osteopathic physician, surgeon, or physician assistant
738 licensed to practice in the state pursuant to chapter 459; or an
739 advanced registered nurse practitioner licensed to practice in
740 the state pursuant to chapter 464. Such examination may include,
741 but need not be limited to, the National Fire Protection
742 Association Standard 1582. A medical examination evidencing good
743 physical condition shall be submitted to the division, on a form
744 as provided by rule, before an individual is eligible for
745 admission into a course under s. 633.408.

746 (6)(f) Be a nonuser of tobacco or tobacco products for at
747 least 1 year immediately preceding application, as evidenced by
748 the sworn affidavit of the applicant.

749 ~~(2) If the division suspends or revokes an individual's~~
750 ~~certificate, the division must suspend or revoke all other~~
751 ~~certificates issued to the individual by the division pursuant~~
752 ~~to this part.~~

753 Section 21. Section 633.414, Florida Statutes, is amended
754 to read:

755 633.414 Retention of firefighter, volunteer firefighter,
756 and fire investigator certifications ~~certification.~~—

757 (1) In order for a firefighter to retain her or his

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

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758 Firefighter Certificate of Compliance, every 4 years he or she
 759 must meet the requirements for renewal provided in this chapter
 760 and by rule, which must include at least one of the following:

761 (a) Be active as a firefighter.~~+~~

762 (b) Maintain a current and valid fire service instructor
 763 certificate, instruct at least 40 hours during the 4-year
 764 period, and provide proof of such instruction to the division,
 765 which proof must be registered in an electronic database
 766 designated by the division.~~+~~

767 (c) Within 6 months before the 4-year period expires,
 768 successfully complete a Firefighter Retention Refresher Course
 769 consisting of a minimum of 40 hours of training to be prescribed
 770 by rule.~~+~~

771 (d) Within 6 months before the 4-year period expires,
 772 successfully retake and pass the Minimum Standards Course
 773 examination pursuant to s. 633.408.

774 (2) In order for a volunteer firefighter to retain her or
 775 his Volunteer Firefighter Certificate of Completion, every 4
 776 years he or she must:

777 (a) Be active as a volunteer firefighter; or

778 (b) Successfully complete a refresher course consisting of
 779 a minimum of 40 hours of training to be prescribed by rule.

780 (3) Subsection (1) does not apply to state-certified
 781 firefighters who are certified and employed full-time, as
 782 determined by the fire service provider, as firesafety
 783 inspectors or fire investigators, regardless of ~~their her or his~~
 784 employment status as firefighters or volunteer firefighters a
 785 firefighter.

786 (4) For the purposes of this section, the term "active"

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787 means being employed as a firefighter or providing service as a
 788 volunteer firefighter for a cumulative period of 6 months within
 789 a 4-year period.

790 (5) The 4-year period begins upon issuance of the
 791 certificate or separation from employment.~~+~~

792 ~~(a) If the individual is certified on or after July 1,~~
 793 ~~2013, on the date the certificate is issued or upon termination~~
 794 ~~of employment or service with a fire department.~~

795 ~~(b) If the individual is certified before July 1, 2013, on~~
 796 ~~July 1, 2014, or upon termination of employment or service~~
 797 ~~thereafter.~~

798 (6) A certificate for a firefighter or volunteer
 799 firefighter expires if he or she fails to meet the requirements
 800 of this section.

801 (7) The State Fire Marshal may deny, refuse to renew,
 802 suspend, or revoke the certificate of a firefighter or volunteer
 803 firefighter if the State Fire Marshal finds that any of the
 804 following grounds exists:

805 (a) Any cause for which issuance of a certificate could
 806 have been denied if it had then existed and had been known to
 807 the division.

808 (b) A violation of any provision of this chapter or any
 809 rule or order of the State Fire Marshal.

810 (c) Falsification of a record relating to any certificate
 811 issued by the division.

812 Section 22. Subsections (1) and (2) of section 633.426,
 813 Florida Statutes, are amended to read:
 814 633.426 Disciplinary action; standards for revocation of
 815 certification.-

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

817 (a) "Certificate" means any of the certificates issued
818 under s. 633.406.

819 (b) "Certification" or "certified" means ~~the act of holding~~
820 a certificate that is current and valid and that meets the
821 requirements for renewal of certification pursuant to this
822 chapter and the rules adopted under this chapter ~~certificate.~~

823 (c) "Convicted" means a finding of guilt, or the acceptance
824 of a plea of guilty or nolo contendere, in any federal or state
825 court or a court in any other country, without regard to whether
826 a judgment of conviction has been entered by the court having
827 jurisdiction of the case.

828 (2) Effective July 1, 2013, an individual who holds a
829 certificate is subject to revocation for any of the following ~~An~~
830 ~~individual is ineligible to apply for certification if the~~
831 ~~individual has, at any time, been:~~

832 (a) Conviction ~~Convicted~~ of a misdemeanor relating to the
833 certification or to perjury or false statements.

834 (b) Conviction ~~Convicted~~ of a felony or a crime punishable
835 by imprisonment of 1 year or more under the law of the United
836 States or of any state thereof, or under the law of any other
837 country.

838 (c) Dishonorable discharge ~~Dishonorably discharged~~ from any
839 of the Armed Forces of the United States.

840 Section 23. This act shall take effect July 1, 2016.

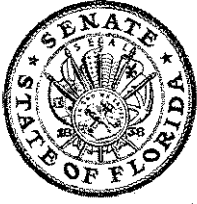
THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016*Meeting Date*SB 992*Bill Number (if applicable)*Topic SB 992*Amendment Barcode (if applicable)*Name Elizabeth BoydJob Title Legislative Affairs DirectorAddress 400 N Monroe StreetPhone 850-413-2863*Street*TallahasseeFL32303Email elizabeth.boyd@myfloridacfo.com*City**State**Zip*Speaking: For Against InformationWaive Speaking: In Support Against
(The Chair will read this information into the record.)Representing CFO AtwaterAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.****This form is part of the public record for this meeting.***

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 19, 2016

I respectfully request that **Senate Bill #992**, relating to **Department of Financial Services**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: PCS/CS/SB 1052 (510850)

INTRODUCER: Appropriations Subcommittee on General Government; Environmental Preservation and Conservation Committee; and Senator Hays

SUBJECT: Environmental Control

DATE: February 15, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1052:

- Revises the number of letters required to provide proof of the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells from two letters to one letter.
- Exempts constructed clay settling areas at phosphate mines from rate of reclamation and financial assurance requirements where its beneficial use has been extended until the beneficial use of the area is completed.
- Allows land set-asides and land use modifications not otherwise required by state law or permit to be used to generate credits for water quality credit trading.
- Modifies the prohibition against granting variances that would result in the provision or requirement being less stringent than federal law. It authorizes moderating provisions or requirements under state law, subject to any necessary approval by the U.S. Environmental Protection Agency.
- Deletes the July 1, 2016, expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund within the Department of Environmental Protection (DEP).
- Allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the facility closure or long-

term care activities if funds under the insurance policy or alternative forms of financial assurance are insufficient for these activities.

- Modifies conditions necessary for the DEP to use funds from the solid waste landfill closure account for the closing and long-term care of solid waste management facilities.
- Allows construction of a stormwater management system to proceed without any further agency action by the DEP or water management district (WMD) if, before construction begins, an electronic self-certification is submitted to the DEP or the WMD which certifies that the proposed system was designed by a Florida registered professional and that the registered professional has certified that the proposed system meets all statutory requirements.
- Requires the stormwater management system to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S.

There is a significant indeterminate fiscal impact to state funds related to solid waste facility closures or long-term care activities. The bill provides an effective date of July 1, 2016.

II. Present Situation:

Water Well Contractor Licenses

Section 373.336, F.S., provides that it is unlawful for any person to construct, repair, or abandon a water well, or operate drilling equipment for those purposes unless that person is employed by or under the supervision of a licensed water well contractor, subject to certain exemptions detailed in s. 373.326, F.S. Each person who engages in the business of a water well contractor must obtain a license from a water management district (WMD).¹ Persons must submit an application to the WMD in which they reside or in which his or her principal place of business is located.² In order to take the licensure exam, an applicant must be 18 years old; have at least two years of experience in constructing, repairing, or abandoning water wells; complete an application form; and pay a nonrefundable fee.³

To provide evidence that an applicant has at least two years of experience in constructing, repairing, or abandoning water wells, an applicant must submit a letter from a water well contractor and a letter from a water well inspector employed by a governmental agency. An applicant must also submit a list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years.⁴

Clay Settling Areas

In Florida, phosphate mining occurs primarily in central Florida. There are 27 phosphate mines in the state covering more than 491,900 acres.⁵ The Florida Legislature requires the reclamation of lands mined for phosphate after July 1, 1975. Reclamation standards for phosphate lands include contouring to safe slopes, providing for acceptable water quality and quantity,

¹ Section 373.323(1), F.S.

² Section 373.323(2), F.S.

³ Section 373.323(3), F.S.

⁴ *Id.*

⁵ DEP, *Phosphate Mines*, <http://www.dep.state.fl.us/water/mines/manpho.htm> (last visited Jan. 15, 2016).

vegetation, and the return of wetlands to pre-mining type, nature, function, and acreage.⁶ A byproduct of phosphate mining is clay, which is deposited in impoundment areas to allow additional settling of the clays.⁷ Mining areas must be reclaimed after the completion of mining operations.⁸ Reclamation of mining areas must be completed according to a schedule detailed in s. 379.209, F.S. If a mining operator cannot comply with the schedule, the operator must post one or more of several forms of security.⁹

The Department of Environmental Protection (DEP) has encouraged prolonged use of clay settling areas in order to minimize the total acreage used for settling, reduce reclamation delays in areas of the mine that are not used for clay settling, and reduce the number of dams that need to be built. Changes in mining practices to utilize clay-settling areas for longer periods of time have resulted in delays in reclamation of those areas, which has triggered the requirement for operators to post the required financial assurance.¹⁰

Water Quality Credit Trading

Water quality credit trading provides a potentially less costly option for meeting the pollution limits for an impaired waterbody. It is a voluntary, market-based approach for reducing pollution to Florida's impaired rivers, lakes, streams, and estuaries.¹¹

The underlying theory is that achieving pollution abatement at the lowest incremental cost at each additional increment reduced is the most cost effective means to achieve pollution abatement. Trading is based on the premise that different dischargers of a pollutant in a watershed can face substantially different costs to control that pollutant. Trading allows pollutant reduction activities to be valued in the form of credits that can then be traded on a local market to promote cost-effective water quality improvements.¹² Water quality credits are generated when a discharger reduces its loading of a given pollutant below the load allowable for the discharger.¹³ Financial savings accrue to parties that buy credits (pollutant reductions) from others for less than the cost of implementing the reductions themselves. Those that sell credits will do so only if the value of the trade is equal to or higher than their investment in the facilities or activities necessary to achieve the pollutant reductions.¹⁴

⁶ *Id.*

⁷ *Id.*

⁸ Section 378.209(1), F.S.

⁹ Section 378.208(2)(a)-(f), F.S.

¹⁰ DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹¹ DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 1 (Oct. 2010), available at <http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf> (last visited Jan. 15, 2016).

¹² *Id.* at 1-2.

¹³ Lower St. Johns River TMDL Executive Committee, *Basin Management Action Plan: For the Implementation of Total Maximum Daily Loads for Nutrients Adopted by the Florida Department of Environmental Protection for the Lower St. Johns River Basin Main Stem*, 53 (October 2008), available at <http://www.dep.state.fl.us/water/watersheds/docs/bmap/adopted-lsjr-bmap.pdf> (last visited Jan. 14, 2016).

¹⁴ DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 2 (Oct. 2010), available at <http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf> (last visited Jan. 14, 2016). See also Fla. Admin. Code R. 62-306, for rules pertaining to water quality credit trading in Florida.

Water quality credit trading can accelerate cleanup because potentially unaffordable costs for individual dischargers can be reduced and cooperative relationships built through trading agreements that foster shared responsibility and commitment. Trading can also accommodate new growth, including new pollutant loadings from urban stormwater, and domestic and industrial wastewater discharges. It offers the possibility for the owners of potential new or increased discharges to purchase credits from existing dischargers so that overall pollutant loads to a watershed are not increased and water quality is preserved.¹⁵

Pursuant to Florida Administrative Code Rule 60-306.400(1), activities that are potentially eligible to generate credits include, but are not limited to:

- Installation or modification of water pollution control equipment or activities that are not required to meet pollution control obligations that reduce nutrient loads below those required;
- Operational changes or the modification of a process or process equipment that reduce the quantity of water discharged through reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrient discharged;
- Implementation of structural nonpoint source management controls;
- Installation, operation and maintenance of new drainage projects designed to treat stormwater;
- Implementation by agricultural operations of soil or water treatment technologies or water-quality enhancing production practices or systems that are confirmed in writing the Department of Agriculture and Consumer Services;
- Other pollution controls, technologies or management practices with a demonstrated ability to reduce nutrient loads below those required; and
- A documented change in land use that goes beyond normal crop rotations or other standard agronomic practices that results in a reduction of nutrient loads below those required.

Variations

The Florida Air and Water Pollution Control Act was enacted in 1967.¹⁶ The legislative declaration states in part that, “[t]he pollution of the air and waters of this state constitute a menace to the public health and welfare; create public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of the air and water.”¹⁷

Section 403.201, F.S., allows the DEP to grant a variance from provisions of the act or adopted rules and regulations. A variance may be granted for one of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution.
- Compliance with the requirements of the variance will require extensive cost and time, therefore, a variance may be issued with a timetable for the actions required.

¹⁵ *Id.*

¹⁶ Chapter 67-436, Laws of Fla.

¹⁷ Section 403.021(1), F.S.

- To relieve or prevent hardship. The variances granted under this provision are limited to 24 months. A variance granted for electrical power plant and transmission line siting, as described in Part II of ch. 403, F.S., may be granted for the life of the permit.¹⁸

The State of Florida is granted authority from the federal government to administer programs such as the CWA, governing water pollution, and the Resource Conservation and Recovery Act (RCRA), governing hazardous waste management. “The most important feature of authorization is the State’s agreement to issue permits that conform to the regulatory requirements of the law, to inspect and monitor activities subject to regulation, to take appropriate enforcement action against violators and to do so in a manner no less stringent than the Federal program.”¹⁹

Therefore, Florida Statutes prohibit any variance for the discharge of waste into state waters or for hazardous waste management that would result in the requirement being less stringent than an applicable federal requirement. However, research, development, and demonstration permits under s. 403.70715, F.S., are exempt from this provision.²⁰

Relief mechanisms may be included in a permit when the natural conditions for the impacted area results in limits that exceed what is authorized in the permit. The relief mechanisms include:

- A site specific alternative criteria for each water quality criteria;
- A variance or exemption for each water quality criteria;
- A variance or exemption for a public water system from the maximum contaminant level or treatments techniques;
- A variance from other permitting standards or conditions; or
- A major or minor exemption for an aquifer.²¹

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering,²² waste tire fees,²³ and oil related fees, fines and penalties.²⁴ The DEP must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;

¹⁸ Section 403.201(1)(a)-(c), F.S.

¹⁹ DEP, *Hazardous Waste Regulation Section*, available at <http://www.dep.state.fl.us/waste/categories/hwRegulation/> (last visited on January 18, 2016).

²⁰ Section 403.201(2), F.S.

²¹ Fla. Admin. Code R. 62-4.050.

²² Section 403.413(6)(a), F.S.

²³ Section 403.718(2), F.S.

²⁴ Section 403.759, F.S.

- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.²⁵

Landfill Closure

The DEP is responsible for implementing and enforcing the state solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste.²⁶ Counties are responsible for operating solid waste disposal facilities, which are permitted by the DEP, in order to meet the needs of incorporated and unincorporated areas of the county.²⁷

Florida Administrative Code Chapters 62-701 through 62-722 establish standards for the construction, operations, and closure of solid waste management facilities.²⁸ Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. The closure plan includes:

- A closure design plan;
- A closure operation plan;
- A long-term care plan; and
- A demonstration that proof of financial assurance for long-term care will be provided.²⁹

Every owner or operator of a landfill is liable for the improper operation and closure of a landfill.³⁰ The owner or operator of a landfill owned or operated by a local or state government or the Federal Government is required to establish a fee, a surcharge on existing fees, or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill.³¹

Operators of solid waste disposal units must receive a closure permit to close a landfill.³² Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.³³

These facilities must also perform long-term care for 30 years.³⁴ This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling

²⁵ Section 403.709(1), F.S.

²⁶ Section 403.705, F.S.

²⁷ Section 403.706, F.S.

²⁸ Fla. Admin. Code R. 62-701.100.

²⁹ Fla. Admin. Code R. 62-701.600(2).

³⁰ Section 403.7125(1), F.S.

³¹ Section 403.7125(2), F.S.

³² Fla. Admin. Code R. 62-701.600(2).

³³ Fla. Admin. Code R. 62-701.600(3)(f)2.

³⁴ Fla. Admin. Code R. 62-701.620(1)

subsidence, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.³⁵

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by the DEP; and
- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the implementing bill for the 2015-2016 General Appropriations Act, Chapter 2015-222, Laws of Florida, and will expire July 1, 2016.³⁶

The DEP provides that in cases where there is a viable insurance policy provided for the purposes of financial assurance, the contractor or the DEP can be reimbursed by the insurance company for the allowable closure costs covered by the financial assurance related insurance policy. Currently, there are five solid waste management facilities that are covered by insurance policies and require closure work by contractors to minimize adverse environmental impacts.³⁷

General Permits

A general permit is granted for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres.³⁸ When the stormwater management system is designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S., there is a rebuttable presumption that the discharge for such system will comply with state water quality standards. The construction of such a system may proceed without any further agency action by the DEP or water management district if, within 30 days after construction begins, an electronic self-certification is submitted to the DEP or applicable WMD that certifies the proposed system was designed by a Florida registered professional to meet the following requirements:

- The total project area involves less than 10 acres and less than two acres of impervious surface;
- No activities will impact wetlands or other surface waters;

³⁵ *Id.*

³⁶ Ch. 2015-222, s. 53, Laws of Fla.

³⁷ DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

³⁸ Section 403.814, F.S.

- No activities are conducted in, on, or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
- The project is not part of a larger common plan, development, or sale; and
- The project does not:
 - Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;
 - Cause adverse impacts to existing surface water storage and conveyance capabilities;
 - Cause a violation of state water quality standards; or
 - Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042, F.S., or a work of the district established pursuant to s. 373.086, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 373.323, F.S., to change the number of letters attesting to the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells. The bill requires a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency, rather than letters from both.

Section 2 amends s. 378.209, F.S., to provide that when the beneficial use of a clay settling area has been extended, the rate of reclamation requirements and financial assurance requirements for phosphate mines do not become applicable until the beneficial use of the settling area is completed.

Section 3 amends s. 403.067, F.S., to allow the Department of Environmental Protection (DEP) to authorize the generation of credits for water quality credit trading for land set-asides and land-use modifications, including constructed wetlands and other water quality improvement projects, which reduce nutrient loads into nutrient-impaired surface waters. The DEP provides that it already has this authority and has adopted rules that allow such trades.³⁹

Section 4 amends s. 403.201, F.S., to modify the prohibition against granting a variance that would result in a provision or requirement being less stringent than federal law. The bill authorizes moderating provisions or requirements, subject to any necessary approval by the United States Environmental Protection Agency.

Section 5 amends s. 403.709, F.S., to delete the July 1, 2016, expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund. The bill allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the approved facility closure or long-term care activities. Funds within the solid waste landfill closure account may be utilized for this purpose, if the amount available under the insurance policy or alternative form of financial assurance is insufficient or otherwise inaccessible to perform or complete the closing or long-term care of the facility, and the DEP has used all of the funds from the insurance policy or alternative form of financial assurance.

³⁹ See Fla. Admin. Code R. 62-306.400.

The bill amends the conditions necessary for the DEP to use funds from the solid waste landfill closure account to contract with a third party for the closing and long-term care of a solid waste management facility. Rather than just requiring that a permittee provided proof of financial assurance for closure in the form of an insurance certificate, the permittee must have provided proof of financial assurance when required by permit or rule and, rather than just requiring an insurance certificate, the permittee may have also provided an alternative form of financial assurance mechanism established pursuant to s. 403.7125, F.S.

Section 6 amends s. 403.814, F.S., to require, stormwater management systems to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to ch. 373, part IV, F.S. The bill changes the requirement for the timing of the submittal of an electronic self-certification from within 30 days after construction starts to before construction starts. As part of the self-certification submitted to the DEP or a WMD, the bill specifies that a Florida registered professional must certify that the proposed system will meet the specified requirements in addition to any requirements in part IV of ch. 373, F.S.

Section 7 reenacts s. 373.414(17), F.S., due to changes made by the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 1052 may have a positive indeterminate fiscal impact on phosphate mine operators by exempting them from the financial assurance requirements concerning the reclamation of a clay settling area when its beneficial use has been extended, until its beneficial use has been completed.

C. Government Sector Impact:

The Department of Environmental Protection (DEP) has requested \$1,000,000 from the Solid Waste Management Trust Fund in their Fiscal Year 2016-2017 Legislative Budget Request to cover costs for closure and long-term care of facilities. The Senate has included this issue in SB 2500, the Fiscal Year 2016-2017 General Appropriations Bill.

The bill has no other fiscal impact to the DEP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that if insufficient funds exist from the insurance policy or alternative forms of financial assurance, the Department of Environmental Protection (DEP) may use funds from the solid waste landfill closure account to cover costs. This language needs to be modified to provide that if insufficient funds exists, the DEP may use funds from the Solid Waste Management Trust Fund. The solid waste landfill closure account is only authorized to contain insurance policy funding or alternative forms of financial assurance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.323, 378.209, 403.067, 403.201, 403.709, and 403.814.

This bill reenacts 373.414 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:

The CS/CS:

- Removes language that provided incentives for water conservation by limiting the conditions under which a water management district (WMD) may lower allocations in consumptive use permits (CUPs) and directing the WMDs to adopt rule providing water conservation incentives;
- Removes language that makes revisions for certain membership qualifications for the Harris Chain of Lakes Restoration Council and authorization for the Lake County legislative delegation to waive membership qualifications based on good cause;
- Removes the requirement for the Department of Environmental Protection (DEP) to adopt by rule a surface water classification to protect surface waters used for treated potable water supply and to add treated potable waters supply as a designated use of surface water segments in certain circumstances;

- Removes prerequisites for the institution of flow control ordinances by local governments;
- Removes language prohibiting local governments from implementing flow control ordinances that would direct solid waste to a landfill gas-to-energy system of facility;
- Allows construction of a stormwater management system to proceed without any further agency action by the DEP or the WMD if, before construction begins, an electronic self-certification is submitted to the DEP or the WMD that certifies that the proposed system was designed by a Florida registered professional, and that the registered professional has certified that the proposed system meets all statutory requirements;
- Adds language that in order for the DEP to contract for the closing and long-term care of a solid waste management facility, a permittee must have shown proof of financial assurance which can include an alternative form of financial assurance mechanism in addition to an insurance certificate;
- The bill allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the approved facility closure or long-term care activities if the amount available under the insurance policy or alternative form of financial assurance is insufficient or otherwise inaccessible to perform or complete the facility closing or long-term care of the facility;
- Removes the appropriation from the Solid Waste Management Trust Fund in Fiscal Year 2016-2017 for the closure and long-term care of solid waste management facilities; and
- Requires, rather than encourages, the stormwater management system to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S.

CS by Environmental Preservation and Conservation on January 20, 2016:

For constructed clay settling areas, the CS provides that if the beneficial use of a clay settling area has been extended, the rate of reclamation and financial assurance requirements do not become applicable until the beneficial use of the area is completed.

Section 403.709, F.S., establishes the solid waste landfill closure account within the Solid Waste Management Trust Fund. The subsection establishing the account expires July 1, 2016. The CS removes the sunset provision.

B. Amendments:

None.



726962

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Hays)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

373.323 Licensure of water well contractors; application,
qualifications, and examinations; equipment identification.—

(3) An applicant who meets the following requirements shall
be entitled to take the water well contractor licensure



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11 examination:

12 (b) Has at least 2 years of experience in constructing,
13 repairing, or abandoning water wells. Satisfactory proof of such
14 experience shall be demonstrated by providing:

15 1. Evidence of the length of time the applicant has been
16 engaged in the business of the construction, repair, or
17 abandonment of water wells as a major activity, as attested to
18 by a letter from a water well contractor or ~~and~~ a letter from a
19 water well inspector employed by a governmental agency.

20 2. A list of at least 10 water wells that the applicant has
21 constructed, repaired, or abandoned within the preceding 5
22 years. Of these wells, at least seven must have been
23 constructed, as defined in s. 373.303(2), by the applicant. The
24 list shall also include:

25 a. The name and address of the owner or owners of each
26 well.

27 b. The location, primary use, and approximate depth and
28 diameter of each well that the applicant has constructed,
29 repaired, or abandoned.

30 c. The approximate date the construction, repair, or
31 abandonment of each well was completed.

32 Section 2. Subsection (4) is added to section 378.209,
33 Florida Statutes, to read:

34 378.209 Timing of reclamation.—

35 (4) When the beneficial use of a constructed clay settling
36 area has been extended, the rate of reclamation requirements in
37 paragraphs (1)(a)-(e) and the requirements of s. 378.208 apply
38 to such settling area when the beneficial use of such settling
39 area is completed.



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40 Section 3. Paragraph (i) is added to subsection (8) of
41 section 403.067, Florida Statutes, to read:

42 403.067 Establishment and implementation of total maximum
43 daily loads.—

44 (8) WATER QUALITY CREDIT TRADING.—

45 (i) Land set-asides and land use modifications not
46 otherwise required by state law or a permit, including
47 constructed wetlands or other water quality improvement
48 projects, which reduce nutrient loads into nutrient impaired
49 surface waters may be used under this subsection.

50 Section 4. Subsection (2) of section 403.201, Florida
51 Statutes, is amended to read:

52 403.201 Variances.—

53 (2) A ~~No~~ variance may not ~~shall~~ be granted from any
54 provision or requirement concerning discharges of waste into
55 waters of the state or hazardous waste management which would
56 result in the provision or requirement being less stringent than
57 a comparable federal provision or requirement, except as
58 provided in s. 403.70715. However, this subsection does not
59 prohibit the issuance of moderating provisions or requirements
60 under state law, subject to any necessary approval by the United
61 States Environmental Protection Agency.

62 Section 5. Present subsections (2) through (4) of section
63 403.709, Florida Statutes, are redesignated as subsections (3)
64 through (5), respectively, and present subsection (5) is
65 amended, to read:

66 403.709 Solid Waste Management Trust Fund; use of waste
67 tire fees.—There is created the Solid Waste Management Trust
68 Fund, to be administered by the department.



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69 ~~(2)-(5)-(a)~~ Notwithstanding subsection (1), a solid waste
70 landfill closure account is established within the Solid Waste
71 Management Trust Fund to provide funding for the closing and
72 long-term care of solid waste management facilities.

73 (a) The department may use funds from the account to
74 contract with a third party for the closing and long-term care
75 of a solid waste management facility if:

76 1. The facility has, ~~or had,~~ or was not required to obtain
77 a department permit to operate as a solid waste management ~~the~~
78 facility;

79 2. The permittee, when required by permit or rule, provided
80 proof of financial assurance for closure in the form of an
81 insurance certificate or an alternative form of financial
82 assurance mechanism established pursuant to s. 403.7125;

83 3. The department has ordered the facility closed or has
84 deemed the facility abandoned ~~facility is deemed to be abandoned~~
85 ~~or was ordered to close by the department;~~

86 4. The closure of the facility is accomplished in
87 substantial accordance with a closure plan approved by the
88 department; and

89 5. The department has sufficient ~~written~~ documentation to
90 confirm that the issuer of ~~insurance company issuing~~ the closure
91 insurance policy or alternative form of financial assurance will
92 provide or reimburse the funds required to complete closing and
93 long-term care of the facility.

94 (b) The department shall deposit all ~~the~~ funds received
95 from the insurer or other parties for reimbursing ~~insurance~~
96 ~~company as reimbursement for~~ the costs of closing or long-term
97 care of the facility into the solid waste landfill closure



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98 account.

99 (c) If the amount available under the insurance policy or
100 alternative form of financial assurance is insufficient or is
101 otherwise inaccessible to perform or complete the facility
102 closing or long-term care under this subsection and the
103 department has used all such funds from the insurance policy or
104 alternative form of financial assurance, the department may use
105 funds from the solid waste landfill closure account to pay for
106 or reimburse additional expenses needed to perform or complete
107 the approved facility closure or long-term care activities ~~This~~
108 ~~subsection expires July 1, 2016.~~

109 Section 6. Subsection (12) of section 403.814, Florida
110 Statutes, is amended to read:

111 403.814 General permits; delegation.—

112 (12) A general permit is granted for the construction,
113 alteration, and maintenance of a stormwater management system
114 serving a total project area of up to 10 acres meeting the
115 criteria of this subsection. Such ~~When the~~ stormwater management
116 must be system is designed, operated, and maintained in
117 accordance with applicable rules adopted pursuant to part IV of
118 chapter 373.7 There is a rebuttable presumption that the
119 discharge from for such systems complies ~~system will comply~~ with
120 state water quality standards. The construction of such a system
121 may proceed without any further agency action by the department
122 or water management district if, before ~~within 30 days after~~
123 construction begins, an electronic self-certification is
124 submitted to the department or water management district which
125 ~~that~~ certifies that the proposed system was designed to meet,
126 and certified by a Florida registered professional as meeting,



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127 ~~to meet~~ the following additional requirements:

128 (a) The total project area involves less than 10 acres and
129 less than 2 acres of impervious surface;

130 (b) No activities will impact wetlands or other surface
131 waters;

132 (c) No activities are conducted in, on, or over wetlands or
133 other surface waters;

134 (d) Drainage facilities will not include pipes having
135 diameters greater than 24 inches, or the hydraulic equivalent,
136 and will not use pumps in any manner;

137 (e) The project is not part of a larger common plan,
138 development, or sale; and

139 (f) The project does not:

140 1. Cause adverse water quantity or flooding impacts to
141 receiving water and adjacent lands;

142 2. Cause adverse impacts to existing surface water storage
143 and conveyance capabilities;

144 3. Cause a violation of state water quality standards; or

145 4. Cause an adverse impact to the maintenance of surface or
146 ground water levels or surface water flows established pursuant
147 to s. 373.042 or a work of the district established pursuant to
148 s. 373.086.

149 Section 7. For the purpose of incorporating the amendment
150 made by this act to section 403.201, Florida Statutes, in a
151 reference thereto, subsection (17) of section 373.414, Florida
152 Statutes, is reenacted to read:

153 373.414 Additional criteria for activities in surface
154 waters and wetlands.—

155 (17) The variance provisions of s. 403.201 are applicable



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156 to the provisions of this section or any rule adopted pursuant
157 to this section. The governing boards and the department are
158 authorized to review and take final agency action on petitions
159 requesting such variances for those activities they regulate
160 under this part and s. 373.4145.

161 Section 8. This act shall take effect upon becoming a law.

162

163 ===== T I T L E A M E N D M E N T =====

164 And the title is amended as follows:

165 Delete everything before the enacting clause
166 and insert:

167

A bill to be entitled

168

An act relating to environmental control; amending s.
169 373.323, F.S.; revising eligibility requirements for
170 taking the water well contractor licensure
171 examination; amending s. 378.209, F.S.; exempting
172 certain constructed clay settling areas from
173 reclamation rate and financial responsibility
174 requirements; amending s. 403.067, F.S.; authorizing
175 the use of land set-asides and land use modifications
176 in water quality credit trading; amending s. 403.201,
177 F.S.; providing applicability of prohibited variances
178 concerning discharges of waste into waters of the
179 state and hazardous waste management; amending s.
180 403.709, F.S.; establishing a solid waste landfill
181 closure account within the Solid Waste Management
182 Trust Fund to provide funding for the closing and
183 long-term care of solid waste facilities; authorizing
184 the department to contract with a third party for such



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185 closing and long-term care under certain conditions;
186 requiring the department to deposit certain funds in
187 the solid waste landfill closure account; authorizing
188 the department to use funds from the solid waste
189 landfill closure account to pay for facility closing
190 and long-term care under certain circumstances;
191 deleting an expiration date; amending s. 403.814,
192 F.S.; requiring that a Florida registered professional
193 certify that certain projects meet additional
194 requirements; requiring such certification to be
195 submitted to the department before, rather than after,
196 construction of a stormwater management system begins;
197 reenacting s. 373.414(17), F.S., relating to variances
198 for activities in surface waters and wetlands, to
199 incorporate the amendment made by the act to s.
200 403.201, F.S., in a reference thereto; providing an
201 effective date.



900188

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2016	.	
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	.	

Appropriations Subcommittee on General Government (Hays)
recommended the following:

Senate Amendment to Amendment (726962)

Delete lines 116 - 127

and insert:

systems must be ~~system is~~ designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373. There is a rebuttable presumption that the discharge from ~~for~~ such systems complies ~~system will comply~~ with state water quality standards. The construction of such a system may proceed without any further agency action by the department



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11 or water management district if, before ~~within 30 days after~~
12 construction begins, an electronic self-certification is
13 submitted to the department or water management district which
14 ~~that~~ certifies that the proposed system was designed by a
15 Florida registered professional, and that the registered
16 professional has certified that the proposed system will ~~to~~ meet
17 the following additional requirements:

By the Committee on Environmental Preservation and Conservation;
and Senator Hays

592-02359-16

20161052c1

1 A bill to be entitled
2 An act relating to environmental control; amending s.
3 373.227, F.S.; prohibiting water management districts
4 from modifying or reducing consumptive use permit
5 allocations if actual water use is less than permitted
6 water use due to water conservation measures or
7 specified circumstances; requiring water management
8 districts to adopt rules providing water conservation
9 incentives, including permit extensions; amending s.
10 373.323, F.S.; revising eligibility requirements for
11 taking the water well contractor licensure
12 examination; amending s. 373.467, F.S.; revising
13 membership qualifications for the Harris Chain of
14 Lakes Restoration Council; authorizing the Lake County
15 legislative delegation to waive such membership
16 qualifications for good cause; providing that
17 resignation or removal of a council member results in
18 a council vacancy; amending s. 373.705, F.S.;
19 requiring water management districts to promote
20 expanded cost-share criteria for additional
21 conservation practices; amending s. 378.209, F.S.;
22 exempting certain constructed clay settling areas from
23 reclamation rate and financial responsibility
24 requirements under certain conditions; amending s.
25 403.061, F.S.; requiring the Department of
26 Environmental Protection to adopt by rule a specific
27 surface water classification to protect surface waters
28 used for treated potable water supply; providing
29 criteria for such rule; authorizing the
30 reclassification of surface waters used for treated
31 potable water supply notwithstanding such rule;

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

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20161052c1

32 amending s. 403.067, F.S.; authorizing the use of land
33 set-asides and land use modifications, including
34 constructed wetlands or other water quality
35 improvement projects, in water quality credit trading;
36 amending s. 403.201, F.S.; providing applicability of
37 prohibited variances concerning discharges of waste
38 into waters of the state and hazardous waste
39 management; amending s. 403.709, F.S.; making
40 technical changes; deleting a scheduled repeal date;
41 amending s. 403.713, F.S.; authorizing local
42 governments to implement a flow control ordinance only
43 upon ownership and utilization of a resource recovery
44 facility and a proven need of flow control for the
45 facility; excluding landfill gas-to-energy systems and
46 facilities from being classified as resource recovery
47 facilities under certain circumstances; amending s.
48 403.861, F.S.; requiring the department to add treated
49 potable water supply as a designated use of a surface
50 water segment under certain circumstances; reenacting
51 s. 373.414(17), F.S., relating to variances for
52 activities in surface waters and wetlands, to
53 incorporate the amendment made by the act to s.
54 403.201, F.S., in a reference thereto; providing an
55 appropriation; providing an effective date.

56
57 Be It Enacted by the Legislature of the State of Florida:

58
59 Section 1. Present subsection (5) of section 373.227,
60 Florida Statutes, is renumbered as subsection (7), and new

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61 subsections (5) and (6) are added to that section, to read:

62 373.227 Water conservation; legislative findings and
63 intent; objectives; comprehensive statewide water conservation
64 program requirements.-

65 (5) To incentivize water conservation, if actual water use
66 is less than permitted water use due to documented
67 implementation of water conservation measures beyond those
68 required in a consumptive use permit, including, but not limited
69 to, those measures identified in best management practices
70 pursuant to s. 570.93, the permitted allocation may not be
71 modified solely due to such water conservation during the term
72 of the permit. To promote water conservation and the
73 implementation of measures that produce significant water
74 savings beyond those required in a consumptive use permit, each
75 water management district shall adopt rules providing water
76 conservation incentives, which may include limited permit
77 extensions.

78 (6) For consumptive use permits for agricultural
79 irrigation, if actual water use is less than permitted water use
80 due to weather events, crop diseases, nursery stock
81 availability, market conditions, or changes in crop type, a
82 district may not, as a result, reduce permitted allocation
83 amounts during the term of the permit.

84 Section 2. Paragraph (b) of subsection (3) of section
85 373.323, Florida Statutes, is amended to read:

86 373.323 Licensure of water well contractors; application,
87 qualifications, and examinations; equipment identification.-

88 (3) An applicant who meets the following requirements shall
89 be entitled to take the water well contractor licensure

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90 examination:

91 (b) Has at least 2 years of experience in constructing,
92 repairing, or abandoning water wells. Satisfactory proof of such
93 experience shall be demonstrated by providing:

94 1. Evidence of the length of time the applicant has been
95 engaged in the business of the construction, repair, or
96 abandonment of water wells as a major activity, as attested to
97 by a letter from a water well contractor ~~or~~ and a letter from a
98 water well inspector employed by a governmental agency.

99 2. A list of at least 10 water wells that the applicant has
100 constructed, repaired, or abandoned within the preceding 5
101 years. Of these wells, at least seven must have been
102 constructed, as defined in s. 373.303(2), by the applicant. The
103 list shall also include:

104 a. The name and address of the owner or owners of each
105 well.

106 b. The location, primary use, and approximate depth and
107 diameter of each well that the applicant has constructed,
108 repaired, or abandoned.

109 c. The approximate date the construction, repair, or
110 abandonment of each well was completed.

111 Section 3. Paragraph (a) of subsection (1) and subsection
112 (3) of section 373.467, Florida Statutes, are amended to read:

113 373.467 The Harris Chain of Lakes Restoration Council.-

114 There is created within the St. Johns River Water Management
115 District, with assistance from the Fish and Wildlife
116 Conservation Commission and the Lake County Water Authority, the
117 Harris Chain of Lakes Restoration Council.

118 (1) (a) The council shall consist of nine voting members,

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119 which shall include a representative of waterfront property
 120 owners, a representative of the sport fishing industry, a person
 121 with experience in an environmental science or regulation
 122 engineer, a person with training in biology or another
 123 scientific discipline, ~~a person with training as~~ an attorney, a
 124 physician, ~~a person with training as~~ an engineer, and two
 125 residents of the county who are ~~do~~ not required to meet any
 126 additional of the other qualifications for membership enumerated
 127 in this paragraph, each to be appointed by the Lake County
 128 legislative delegation. The Lake County legislative delegation
 129 may waive the qualifications for membership on a case-by-case
 130 basis if good cause is shown. A ~~No~~ person serving on the council
 131 may not be appointed to a council, board, or commission of any
 132 council advisory group agency. The council members shall serve
 133 as advisors to the governing board of the St. Johns River Water
 134 Management District. The council is subject to the provisions of
 135 chapters 119 and 120.

136 (3) The council shall meet at the call of its chair, at the
 137 request of six of its members, or at the request of the chair of
 138 the governing board of the St. Johns River Water Management
 139 District. Resignation by a council member, or removal of a
 140 council member for failure to attend three consecutive meetings
 141 without an excuse approved by the chair, shall result in a
 142 vacancy on the council.

143 Section 4. Subsection (5) is added to section 373.705,
 144 Florida Statutes, to read:

145 373.705 Water resource development; water supply
 146 development.—

147 (5) The water management districts shall promote expanded

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20161052c1

148 cost-share criteria for additional conservation practices, such
 149 as soil and moisture sensors and other irrigation improvements,
 150 water-saving equipment, water-saving household fixtures, and
 151 software technologies that can achieve verifiable water
 152 conservation by providing water use information to utility
 153 customers.

154 Section 5. Subsection (4) is added to section 378.209,
 155 Florida Statutes, to read:

156 378.209 Timing of reclamation.—

157 (4) If the beneficial use of a constructed clay settling
 158 area has been extended, the rate of reclamation requirements in
 159 paragraphs (1)(a)-(e) and the requirements of s. 378.208 shall
 160 become applicable for such area when the beneficial use of such
 161 area is completed.

162 Section 6. Subsection (29) of section 403.061, Florida
 163 Statutes, is amended to read:

164 403.061 Department; powers and duties.—The department shall
 165 have the power and the duty to control and prohibit pollution of
 166 air and water in accordance with the law and rules adopted and
 167 promulgated by it and, for this purpose, to:

168 (29) (a) Adopt by rule special criteria to protect Class II
 169 and Class III shellfish harvesting waters. Such rules may
 170 include special criteria for approving docking facilities that
 171 have 10 or fewer slips if the construction and operation of such
 172 facilities will not result in the closure of shellfish waters.

173 (b) Adopt by rule a specific surface water classification
 174 to protect surface waters used for treated potable water supply.
 175 These designated surface waters shall have the same water
 176 quality criteria protections as waters designated for fish

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177 consumption, recreation, and the propagation and maintenance of
 178 a healthy, well-balanced population of fish and wildlife, and
 179 shall be free from discharged substances at a concentration
 180 that, alone or in combination with other discharged substances,
 181 would require significant alteration of permitted treatment
 182 processes at the permitted treatment facility or that would
 183 otherwise prevent compliance with applicable state drinking
 184 water standards in the treated water. Notwithstanding this
 185 classification or the inclusion of treated water supply as a
 186 designated use of a surface water, a surface water used for
 187 treated potable water supply may be reclassified to the potable
 188 water supply classification.

189
 190 The department shall implement such programs in conjunction with
 191 its other powers and duties and shall place special emphasis on
 192 reducing and eliminating contamination that presents a threat to
 193 humans, animals or plants, or to the environment.

194 Section 7. Paragraph (i) is added to subsection (8) of
 195 section 403.067, Florida Statutes, to read:

196 403.067 Establishment and implementation of total maximum
 197 daily loads.—

198 (8) WATER QUALITY CREDIT TRADING.—

199 (i) Land set-asides and land use modifications not
 200 otherwise required by state law or a permit, including
 201 constructed wetlands or other water quality improvement
 202 projects, that reduce nutrient loads into nutrient impaired
 203 surface waters may be used under this subsection.

204 Section 8. Subsection (2) of section 403.201, Florida
 205 Statutes, is amended to read:

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

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206 403.201 Variances.—

207 (2) ~~A~~ No variance may not ~~shall~~ be granted from any
 208 provision or requirement concerning discharges of waste into
 209 waters of the state or hazardous waste management which would
 210 result in the provision or requirement being less stringent than
 211 a comparable federal provision or requirement, except as
 212 provided in s. 403.70715. However, this subsection does not
 213 prohibit the issuance of moderating provisions or requirements
 214 under state law, subject to any necessary approval by the United
 215 States Environmental Protection Agency.

216 Section 9. Subsection (5) of section 403.709, Florida
 217 Statutes, is amended to read:

218 403.709 Solid Waste Management Trust Fund; use of waste
 219 tire fees.—There is created the Solid Waste Management Trust
 220 Fund, to be administered by the department.

221 (5) (a) Notwithstanding subsection (1), a solid waste
 222 landfill closure account is established within the Solid Waste
 223 Management Trust Fund to provide funding for the closing and
 224 long-term care of solid waste management facilities. The
 225 department may use funds from the account to contract with a
 226 third party for the closing and long-term care of a solid waste
 227 management facility if:

- 228 1. The facility has or had a department permit to operate
 229 as a solid waste management ~~the~~ facility;
- 230 2. The permittee provided proof of financial assurance for
 231 closure in the form of an insurance certificate;
- 232 3. The department deemed the facility ~~is deemed~~ to be
 233 abandoned or ~~was~~ ordered the facility to close ~~by the~~
 234 ~~department;~~

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

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235 4. Closure is accomplished in substantial accordance with a
236 closure plan approved by the department; and

237 5. The department has written documentation that the
238 insurance company issuing the closure insurance policy will
239 provide or reimburse the funds required to complete closing and
240 long-term care of the facility.

241 (b) The department shall deposit the funds received from
242 the insurance company as reimbursement for the costs of the
243 closure closing or long-term care of the facility into the solid
244 waste landfill closure account.

245 ~~(c) This subsection expires July 1, 2016.~~

246 Section 10. Subsection (2) of section 403.713, Florida
247 Statutes, is amended, and subsection (3) is added to that
248 section, to read:

249 403.713 Ownership and control of solid waste and recovered
250 materials.—

251 (2) Any local government that ~~which~~ undertakes resource
252 recovery from solid waste pursuant to general law or special act
253 may institute a flow control ordinance for the purpose of
254 ensuring that the resource recovery facility receives an
255 adequate quantity of solid waste from solid waste generated
256 within its jurisdiction. Such authority does ~~shall~~ not extend to
257 recovered materials, whether separated at the point of
258 generation or after collection, which ~~that~~ are intended to be
259 held for purposes of recycling pursuant to the requirements of
260 this part; however, the handling of such materials is ~~shall be~~
261 subject to applicable state and local public health and safety
262 laws. A flow control ordinance may be instituted under this
263 section by a local government only after it owns, and actively

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

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264 uses, a resource recovery facility and the local government
265 proves the necessity of instituting flow control to ensure
266 sufficient materials for that resource recovery facility. A flow
267 control ordinance also does not limit the ability of other
268 entities and districts to contract for waste management
269 services.

270 (3) For the purposes of exercising flow control authority
271 under this section, a resource recovery facility does not
272 include a landfill gas-to-energy system or facility.

273 Section 11. Subsection (21) is added to section 403.861,
274 Florida Statutes, to read:

275 403.861 Department; powers and duties.—The department shall
276 have the power and the duty to carry out the provisions and
277 purposes of this act and, for this purpose, to:

278 (21) (a) Upon issuance of a construction permit to construct
279 a new public water system drinking water treatment facility to
280 provide potable water supply using a surface water that, at the
281 time of the permit application, is not being used as a potable
282 water supply, and the classification of which does not include
283 potable water supply as a designated use, the department shall
284 add treated potable water supply as a designated use of the
285 surface water segment in accordance with s. 403.061(29) (b).

286 (b) For existing public water system drinking water
287 treatment facilities that use a surface water as a treated
288 potable water supply, which surface water classification does
289 not include potable water supply as a designated use, the
290 department shall add treated potable water supply as a
291 designated use of the surface water segment in accordance with
292 s. 403.061(29) (b).

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

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20161052c1

293 Section 12. For the purpose of incorporating the amendment
294 made by this act to section 403.201, Florida Statutes, in a
295 reference thereto, subsection (17) of section 373.414, Florida
296 Statutes, is reenacted to read:

297 373.414 Additional criteria for activities in surface
298 waters and wetlands.—

299 (17) The variance provisions of s. 403.201 are applicable
300 to the provisions of this section or any rule adopted pursuant
301 to this section. The governing boards and the department are
302 authorized to review and take final agency action on petitions
303 requesting such variances for those activities they regulate
304 under this part and s. 373.4145.

305 Section 13. For the 2016-2017 fiscal year, the sum of
306 \$2,339,764 in nonrecurring funds is appropriated to the
307 Department of Environmental Protection from the Solid Waste
308 Management Trust Fund in the Fixed Capital Outlay-Agency
309 Managed-Closing and Long-Term Care of Solid Waste Management
310 Facilities appropriation category for the closing and long-term
311 care of solid waste management facilities.

312 Section 14. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

1052

Bill Number (if applicable)

900188

Amendment Barcode (if applicable)

Topic _____

Name Diana Ferguson

Job Title Attorney

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Phone 850-481-6788

Taloo

City

FL

State

32301

Zip

Email dfergus@mail.utah.gov
-ecenis.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Chapter, American Society of Landscape Architects

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

1052

Bill Number (if applicable)

Topic "10-2" General Permit

900188

Amendment Barcode (if applicable)

Name KURT SPITZER

AMENDMENT TO
726962

Job Title EXEC. DIRECTOR

Address 719 E. PARK AVE

Phone 850 228 6212

Street

Tallahassee

Email KURTSPITZER@KSANET
NET

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLA. STORMWATER ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

1052

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title _____

Address 310 W College Ave

Phone 850-228-1296

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City

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Zip

Email Jim@magnumstrategiesllc.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Nursery, Growers & Landscape Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

1052 ^{AS}
amended

Bill Number (if applicable)

Topic Environmental Control

Amendment Barcode (if applicable)

Name Lee Killinger

Job Title Dir. Pub. Relations & Govt. Affairs

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FL

32318

City

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Zip

Email Lee.Killinger@mosaic.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing MOSAIC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SB1052

Bill Number (if applicable)

Topic ENVIRONMENTAL CONTROL

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

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Zip

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Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing NATIONAL WASTE + RECYCLING ASSN - FL CHAPTER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: CS/SB 1176

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Diaz de la Portilla

SUBJECT: Dredge and Fill Activities

DATE: February 10, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Fav/CS
2.	Howard	DeLoach	AGG	Recommend: Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1176 authorizes the Department of Environmental Protection (DEP) to implement a voluntary state programmatic general permit for all dredge and fill activities impacting ten acres or less of wetlands or other surface waters, subject to agreement with the United States Army Corps of Engineers (Corps), if the general permit is at least as protective of the environment and natural resources as existing state law under part IV of chapter 373, F.S., and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. Additionally, the bill requires that a person seeking to use a statewide programmatic general permit consent to applicable federal wetland jurisdiction criteria.

There is no fiscal impact to the state unless the DEP seeks an expansion of the State Programmatic General Permit (SPGP) program and receives approval from the Corps. Expansion of the program may require additional resources that are indeterminate.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Dredging means excavation in wetlands or other surface waters or excavation in uplands that creates wetlands or other surface waters.¹ Filling means deposition of any material in wetlands or

¹ Section 373.403(13), F.S.

other surface waters.² Dirt, sand, gravel, rocks, shell, pilings, mulch, and concrete are all considered fill if they are placed in a wetland or other surface water. Dredging and filling activities are regulated by local governments, the water management districts, the Florida Department of Environmental Protection (DEP), and the U.S. Army Corps of Engineers (Corps).

Federal Regulation: Section 10 and Section 404 Permitting

Section 10 of the Rivers and Harbors Act of 1899 (Section 10), regulates virtually all work in, over, and under waters listed as navigable waters of the United States.³ Examples of projects requiring Section 10 permits include beach nourishment, boat ramps, breakwaters, dredging, filling, mooring buoys, piers, and construction of marina facilities. Additionally, Section 404 of the Clean Water Act governs activities in wetlands and regulates the discharge of “dredged or fill” material into the waters of the United States.⁴

Section 404 establishes a program for permits for the discharge of dredged or fill material into the navigable waters, including wetlands, at specified disposal sites. Activities that are regulated under this program include fill for development, water resource projects, infrastructure development, and mining projects. The Corps has been responsible for regulating activities in navigable waters ways through the granting of permits since the passage of the Rivers and Harbors Act of 1899.⁵ Section 404 of the CWA broadened the Corps authority over “dredging and filling” in the waters of the United States, including many wetlands.⁶ The Corps administers the permits under the U.S. Environmental Protection Agency (EPA) established guidelines, and subject to an EPA veto on a case-by-case basis.⁷

The basic premise of the permitting program is that no discharge of dredged or fill material may be permitted if:

- A practicable alternative exists that is less damaging to the aquatic environment; or
- The nation’s waters would be significantly degraded.⁸

An individual permit is required for potentially significant impacts. Individual permits are reviewed by the Corps, who evaluates applications under a public interest review, as well as the environmental criteria set forth by the EPA.⁹ Under the guidelines no discharge of dredged or fill material may be permitted if there is a practicable alternative to the proposed discharge which would have a less adverse impact on the aquatic ecosystem, so long as such alternative does not

² Section 373.403(14), F.S.

³ See 33 U.S.C. s. 403 (2012).

⁴ See 33 U.S.C. s. 1344 (2012).

⁵ DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, pg. 2 (Sept. 30, 2005) available at http://www.aswm.org/pdf_lib/consolidation_program.pdf.

⁶ *Id.*

⁷ O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1255 (1995) available at <http://digitalcommons.law.umaryland.edu/mlr/vol54/iss4/6/>.

⁸ EPA, *Section 404 Permitting Program*, <http://www.epa.gov/cwa-404/section-404-permit-program> (last visited Jan. 23, 2016).

⁹ *Id.*

have other significant adverse environmental consequences.¹⁰ Practicable alternatives, include, but are not limited to:

- Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters.
- Discharges or dredged or fill material at other locations in waters of the United States or ocean waters.¹¹

An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.¹²

State Assumption

The CWA authorizes the EPA to issue general permits on a state, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if determined that the activities in such category:

- Are similar in nature;
- Will cause only minimal adverse environmental effects when performed separately; and
- Will have only minimal cumulative adverse effects on the environment.¹³

General permits are not available for waters that are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto.¹⁴ This exception prohibits general permits for what are termed “Phase I waters”, the traditional navigable waters of the United States and adjacent wetlands.¹⁵ Therefore, state assumption under Section 404 does not affect the Corps responsibilities to regulate the navigable waters under Section 10.

To administer its own individual and general permit program, a state must submit an application to the EPA, which includes a complete description of the program it proposes to administer and establish under state law.¹⁶ In addition, the application must include a statement testifying that the laws of the state provide for adequate authority to carry out the described program.¹⁷ The EPA then conducts a rigorous assessment of the state’s program and ensures that it is no less stringent than the federal program.¹⁸ If the EPA authorizes the state to “assume” control over the federal Section 404 permit program, then an applicant would only need to get a state permit for dredged or fill material discharges in certain waters. Any general permit issued is only valid for a period of up to five years.¹⁹

¹⁰ 40 C.F.R. §404(b)(1).

¹¹ *Id.*

¹² 40 C.F.R. §404(b)(2).

¹³ 33 U.S.C. s. 1344(e).

¹⁴ 33 U.S.C. s. 1344(g).

¹⁵ Houck at 1255.

¹⁶ 33 U.S.C. s. 1344(g).

¹⁷ *Id.*

¹⁸ David Evans, *Clean Water Act §404 Assumption: What is it, how does it work, and what are the benefits?*, Vol. 31, No.3 National Wetlands Newsletter, pg. 18 (May-June 2009) available at http://www.aswm.org/pdf_lib/evans_2009.pdf.

¹⁹ 33 U.S.C. s. 1344(h)(1)(A)(ii).

Two states, Michigan and New Jersey, have assumed administration of the federal permit program.²⁰ Other states have reviewed the possibility of assuming Section 404 permitting but have expressed reasons for not pursuing assumption such as lack of funding, limit of program administration to "non-navigable waters," concerns regarding Federal requirements and oversight, availability of alternative mechanisms for state wetlands protection, and the controversial nature of regulation of wetlands and other aquatic resources.²¹ Additionally, the Endangered Species Act poses challenges for state assumption. To be granted assumption a state would have to have an equivalent level of protection as under the Endangered Species Act for listed species.²²

In 2005, the Florida Legislature directed the DEP to develop a strategy to consolidate, to the maximum extent practicable, federal and state wetland permitting and secure complete authority over dredge and fill activities impacting 10 acres or less of wetlands and other surface waters, including navigable waters, through the environmental resource permitting.²³ Most of the waters in Florida are Phase I waters and are not eligible for assumption.²⁴ The report concluded that complete assumption of the federal program would require changes to federal and Florida law and recommended that the Legislature consult with the Congressional delegation on opportunities to amend the federal regulations to make assumption more viable.²⁵

General Permits

As an alternative to state assumption, the CWA was amended in 1977 to authorize the Corps to issue general permits that:

- Are similar in nature;
- Cause only minimal adverse environmental effects when performed separately;
- Conform to the Section 404(b)(1) guidelines;
- Set forth specific requirements and standards for authorized activities; and
- Terminate within five years.²⁶

A category of general permits was set forth by Corps regulations called programmatic permits.²⁷ The St. Johns River Water Management Program was issued a Programmatic General Permit (PGP) on behalf of the Corps for certain types of projects with minor impacts to wetlands or

²⁰ O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1268 (1995).

²¹ EPA, *State or Tribal Assumption of the Section 404 Permit Program*, <http://www.epa.gov/cwa-404/state-or-tribal-assumption-section-404-permit-program> (last visited Jan. 23, 2016).

²² Leah Stetson, Association of State Wetlands Managers, Inc. (ASWM), *State Programmatic General Permits (A Cautionary Tale to Enhance Dialogue)*, pg. 5 (April-May 2008), available at http://www.aswm.org/pdf_lib/spgps_0508.pdf.

²³ Ch. 2005-273, s. 3, Laws of Fla.

²⁴ DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, pg. 2, 8 (Sept. 30, 2005).

²⁵ *Id.* at 3.

²⁶ 33 U.S.C. s. 1344(e).

²⁷ O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1282 (1995).

surface waters.²⁸ The scope of the PGP is limited to residential, commercial, or institutional projects with up to three acres of impacts to low quality or urbanized non-tidal wetlands of the following four types:

- Wetlands in pine plantations with raised beds in production over twenty years;
- Herbaceous wetlands in improved pasture;
- Wetlands on parcels bordered by at least 75 percent development; or
- Wetlands covered by greater than 80 percent invasive exotic vegetation.²⁹

The Corps combined the concepts of a general permit (for “similar” and “minimal activities”), with a programmatic permit (for “duplicative” state programs) and created a State Programmatic General Permit (SPGP).³⁰ Under a SPGP, the designated state agency issues permits on behalf of the federal government for projects of a defined and limited impact. A SPGP is designed to streamline the permitting process by eliminating duplication of efforts between the Corps and states, while obeying state and federal wetland laws and regulations. Each SPGP is reviewed and reissued every five years by the Corps district with input from other federal agencies, the state, and the public.³¹

Unlike under complete assumption, under a SPGP program the state or agency is authorized to issue federal permits, which means federal resource agency coordination requirements remain. The state or agency reviews the application and makes the initial determination of the level of impact of the proposed permit. Because projects authorized under the SPGP are limited to minimal individual and cumulative impacts, the complexity and physical size of projects are limited as well.³² Typical wetland impacts allowed in SPGPs range from 5,000 square feet to one acre.³³

Section 373.4144, F.S., authorizes the DEP and water management districts to implement a voluntary state programmatic general permit for all dredge and fill activities impacting three acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps, if the general permit is at least as protective of the environment and natural resources as existing state law under part IV of chapter 373, F.S., and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899.

Florida was issued a pilot state programmatic general permit (SPGP I) in 1994 which was limited to four categories of activities, including docks, piers and marinas; shoreline stabilization; boat ramps; and maintenance dredging, in only the counties of Duval, Nassau, Clay, and St. Johns. The permit was expanded in 1996 to include the rest of the DEP’s Northeast District (SPGP-II) and to the areas of the other districts, except for Northwest Florida and Monroe County, in 1997

²⁸ Department of the Army, *Programmatic General Permit SAJ-111*, pg. 1 (Oct. 31, 2014) available at http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/PGP/Signed%20SAJ-111.pdf.

²⁹ *Id.* at 1, 2.

³⁰ Houck at 1283.

³¹ Leah Stetson, Association of State Wetlands Managers, Inc. (ASWM), *State Programmatic General Permits (A Cautionary Tale to Enhance Dialogue)*, pg. 2 (April-May 2008).

³² DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, pg. 5 (Sept. 30, 2005).

³³ *Id.*

(SPGP-III). SPGP III was an expanded version that covered additional types of activities but was later scaled back to the original four project categories.³⁴

SPGP-IV was issued in 2006 by the Corps. The permit covered docks, piers, and marinas; shore stabilization; boat ramps; and maintenance and dredging. SPGP-IV was revised in 2011 for use throughout the entire state, except for Monroe County and other specified areas. SPGP IV-R1 covers the following categories of work:

- Shoreline stabilization;
- Boat ramps and boat launch areas;
- Docks, piers, associated facilities, and other minor piling-supported structures; and
- Maintenance dredging of canals and channels (including removal of organic detrital material from freshwater lakes and rivers).³⁵

The DEP reviews a permit application for the type of work covered under SPGP IV-R1.³⁶ The agreement specifies under what circumstances a project is considered green, yellow, or red. If the permit meets all of the conditions of the SPGP program it is processed as “green” in which case issuance of the permit by the DEP constitutes verification of qualification for the corresponding federal permit. “Yellow” projects require additional federal review. The Corps meets with the appropriate federal agencies and a combined federal position on the permit is taken.³⁷ The position may state that all concerns have been addressed and the project is now considered “green” and the DEP is authorized to issue the permit; that special conditions may be applied; or that the Corps elects to evaluate the project separately.³⁸ If a project has the potential to adversely impact a federally-listed threatened or endangered species or its designated critical habitat then it is considered “red.” If the project is “red” then the DEP and the Corps review the project separately and separate permits are issued.³⁹

In August 2015, the Corps published a draft of the proposed SPGP V.⁴⁰ The permit would add a fifth category of work to include “transient activities (removal of derelict vessels, scientific devices, upland to upland directional drilling, and geotechnical investigations)” to the list of covered categories.⁴¹ Additionally, the proposed draft would require projects for shoreline stabilization, boat ramps or launches, or dock, piers, or associated facilities that are proposed “anywhere between the shoreline and federally maintained channel, turning basin, etc., of a port or inlet” to be considered “red,” and, therefore, such projects would require the Corps to review the project separately.⁴²

³⁴ ASWM at 5.

³⁵ U.S. Army Corps of Engineers, *State Programmatic General Permit (SPGP IV-R1) State of Florida*, pg. 1 (July 25, 2011) available at http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/SPGP/SPGP_IV_Permit_Instrument.pdf.

³⁶ SPGP IV-R1 at 1.

³⁷ *Id.* at 4.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ U.S. Corps of Army Engineers, *Draft of Proposed State Programmatic General Permit (SPGP-V)*, available at <http://www.saj.usace.army.mil/Missions/Regulatory/PublicNotices/tabid/6072/Article/613604/spgp-v-saj-2015-02575.aspx>.

⁴¹ *Id.* at 1.

⁴² *Id.* at 7, 9, and 12.

Wetlands Delineation

Under Florida law, wetlands are defined as those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils.⁴³ The DEP in coordination with the water management districts created a statewide methodology for the delineation of the extent of wetlands.⁴⁴ Section 373.4211, F.S., provides ratification of the statewide delineation rule. All state, local, and regional governments in Florida delineate wetlands in accordance with the state methodology.⁴⁵ Under federal law, wetland boundaries are delineated using the U.S. Army Corps of Engineers 1987 wetland delineation manual adopted in coordination with the Environmental Protection Agency.⁴⁶ For most projects, the use of the federal delineation method and the state delineation method result in similar wetland boundaries.⁴⁷ However, the primary area of difference between the state and federal methodologies is in the indicator status of certain plants and social conditions.⁴⁸

III. Effect of Proposed Changes:

CS/SB 1176 amends s. 373.4144, F.S., to increase the acreage threshold within which the Department of Environmental Protection (DEP) is authorized to implement a voluntary state programmatic general permit (SPGP) for all dredge and fill activities pursuant to an agreement with the United States Army Corps of Engineers. The bill would authorize the DEP to seek an SPGP program covering dredge and fill activities impacting 10 acres or less of wetlands or other surface waters, including navigable waters.

The bill requires an applicant seeking to use a statewide programmatic general permit to consent to the applicable federal wetland jurisdiction criteria that is authorized by regulations implementing Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act for the limited purpose of implementing the state programmatic general permit.

The bill authorizes the DEP to pursue delegation or assumption of the federal permitting program regulating the discharge of dredged or fill material and removes the requirement that assumption encompass all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

The bill takes effect July 1, 2016.

⁴³ Section 373.019, F.S.

⁴⁴ Chapter 62-340, F.A.C.

⁴⁵ DEP, *Homeowner's Guide to Wetlands*, pg. 6 (July 2002), http://www.dep.state.fl.us/water/wetlands/docs/erp/wetland_guide.pdf.

⁴⁶ EPA, *Section 404 of the Clean Water Act: How Wetlands are Defined and Identified*, <http://www.epa.gov/cwa-404/section-404-clean-water-act-how-wetlands-are-defined-and-identified> (last visited Jan. 23, 2016).

⁴⁷ DEP at 6.

⁴⁸ *Id.* at 8.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the State Programmatic General Permit (SPGP) program is expanded to include dredge and fill activities impacting ten acres or less of wetlands or other surface waters, additional costs incurred by permit applicants may be reduced as a result of the streamlined permitting process.

C. Government Sector Impact:

CS/SB 1176 has an indeterminate fiscal impact to the state. If the Department of Environmental Protection (DEP) seeks expansion of its current State Programmatic General Permit program and approval is granted from the United States Army Corps of Engineers, reprogramming the permit tracking and compliance and enforcement applications and databases would be necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.4144 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on January 27, 2016:

The CS removes the requirement that the delegation or assumption encompass all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Environmental Preservation and Conservation;
and Senator Diaz de la Portilla

592-02667-16

20161176c1

A bill to be entitled

An act relating to dredge and fill activities;
amending s. 373.4144, F.S.; revising the acreage of
wetlands and other surface waters subject to impact by
dredge and fill activities under a state programmatic
general permit; providing that seeking to use such a
permit consents to specified federal wetland
jurisdiction criteria; authorizing the Department of
Environmental Protection to delegate federal
permitting programs for the discharge of dredged or
fill material; deleting certain conditions limiting
when the department may assume federal permitting
programs for the discharge of dredged or fill
material; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 373.4144,
Florida Statutes, are amended to read:

373.4144 Federal environmental permitting.—

(2) (a) In order to effectuate efficient wetland permitting
and avoid duplication, the department and water management
districts are authorized to implement a voluntary state
programmatic general permit for all dredge and fill activities
impacting 10 ~~3~~ acres or less of wetlands or other surface
waters, including navigable waters, subject to agreement with
the United States Army Corps of Engineers, if the general permit
is at least as protective of the environment and natural
resources as existing state law under this part and federal law
under the Clean Water Act and the Rivers and Harbors Act of
1899.

Page 1 of 2

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

592-02667-16

20161176c1

(b) By seeking to use a statewide programmatic general
permit, an applicant consents to applicable federal wetland
jurisdiction criteria, which are not included pursuant to this
part, but which are authorized by the regulations implementing
s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,
33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors
Act of 1899 as required by the United States Army Corps of
Engineers, notwithstanding s. 373.4145 and for the limited
purpose of implementing the state programmatic general permit
authorized by this subsection.

(3) The department may pursue ~~This section may not preclude
the department from pursuing a series of regional general
permits for construction activities in wetlands or surface
waters or delegation or ~~complete~~ assumption of federal
permitting programs regulating the discharge of dredged or fill
material pursuant to s. 404 of the Clean Water Act, Pub. L. No.
92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the
Rivers and Harbors Act of 1899, ~~so long as the assumption
encompasses all dredge and fill activities in, on, or over
jurisdictional wetlands or waters, including navigable waters,
within the state.~~~~

Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

February 2, 2016

The Honorable Alan Hays
Chairman
Appropriations Subcommittee on General Government

RE: C/S SB 1176

Dear Chairman Hays:

Please agenda the following bill at the next opportunity: CS SB 1176

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
State Senator, District 40

Cc: Ms Jamie DeLoach, Staff Director; Ms. Lisa Waddell, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: CS/SB 1200

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bean

SUBJECT: Pay-for-Success Contract Program

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Fav/CS
2.	Davis	DeLoach	AGG	Recommend: Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1200 authorizes a state agency, contingent upon authorization in the General Appropriations Act, to negotiate and enter into a pay-for-success contract with a private entity. The bill defines the “pay-for-success contract” as a contract between a state agency and a private entity to fund a high-quality program to address a critical public problem with historically poor outcomes.

The bill specifies the duties of the state agency for a pay-for-success contract. An independent evaluator must determine whether the outcome measures have been met under the contract, and the private entity must report annually to the state. Funding obtained under this program is not considered a procurement item under s. 287.057, F.S.

By December 1, 2016, the Department of Management Services (DMS) must prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

The fiscal impact to state funds is indeterminate and, according to the DMS, can be absorbed within existing resources.

The bill takes effect upon becoming a law.

II. Present Situation:

Pay-for-Success Contract Program

A pay-for-success program allows the state to enter into contracts with private non-profit organizations to provide targeted services.¹ The non-profits will provide initial funding for the services provided under the contract. If the private entity achieves the performance measure outcomes identified in the contract, the entity will have earned the 'success payment' from the DMS. This success payment is presumably the costs of the services plus some level of profit or incentive for achieving the contracted outcomes.

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency² procurement of personal property and services.³ Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.⁴

Contracts for commodities or contractual services in excess of \$35,000 must be procured using a competitive solicitation process.⁵ However, some specified contractual services and commodities are not subject to competitive-solicitation requirements.⁶

¹ See <http://www.sayfiereview.com/page/Lawmakers%20seek%20pay%20for%20success%20program> (last visited on January 20, 2016).

² As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

³ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

⁴ See ss. 287.012(6) and 287.057, F.S.

⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁶ See s. 287.057(3)(e), F.S.

The DMS assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.⁷

III. Effect of Proposed Changes:

Section 1 provides numerous definitions necessary to implement the pay-for-success contracts. The term “pay-for-success contract” or “contract” is defined as a contract entered into between a state agency and a private entity to fund a high-quality program specified in the General Appropriations Act, to address a critical public problem with historically poor outcomes. The term “private entity” is defined as a private, not-for-profit organization exempt from federal income taxation pursuant to s. 501(c)3 of the Internal Revenue Code of 1986, which enters into a pay-for-success contract with a state agency and subcontracts with one or more entities to provide the actual services. The term “success payment” is defined as the amount paid to a private entity that meets the performance outcome measures established in a pay-for-success contract.

Under the pay-for-success concept, the private entity must secure initial funding for the services provided under the contract from private-sector investors and enter into separate subcontracts with entities providing the services for the identified program.

Contingent upon authorization in the General Appropriations Act, a state agency may negotiate and enter into a pay-for-success contract with a private entity. This contract may be initiated in one fiscal year and continue into subsequent fiscal years and may be paid from the appropriations authorized in any of those fiscal years.

The state agency is required to:

- Determine performance outcome measures to be included in the contract.
- Determine the data to be included in an annual report filed by a private entity pursuant to subsection (4) of this section.
- Select an independent, nationally recognized evaluator through a request for proposals process to annually evaluate the performance outcome measures specified in the contract.
- Ensure that participants of the program or their guardians have given permission to share participate data and signed an acknowledgment that data may be shared with an independent evaluator for research and evaluation purposes, and maintain documentation of the required acknowledgements.

A pay-for-success contract must:

- Be limited to quality programs specified in the General Appropriations Act.
- Require the private entity to underwrite or secure upfront capital from private funders, such as foundations, banks, or businesses, to fund the services provided under the subcontracts.
- Require an independent evaluator to determine whether the specified performance outcomes have been achieved.
- Require a success payment, consistent with the General Appropriations Act, only if the specified performance outcome measures are achieved.

⁷ Section 287.032(2), F.S.

- Prohibit the private entity from receiving or viewing any personally identifiable participant information.

The private entity shall annually report to the state for the duration of the contract period. In addition, the bill specifies that funding for a high-quality program under this bill is not considered a procurement item under s. 287.057, F.S.

By December 1, 2016, the DMS shall prescribe the procedures to be used by state agencies in connection with pay-for-success contracts which are consistent with this section.

Section 2 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1200 has an indeterminate fiscal impact. Investors who fund the private providers of services could potentially lose their investments if the service provider does not meet the outcome measures whereby the state would not be required to make payment for the services provided.

C. Government Sector Impact:

Funding for pay-for-success contracts is contingent upon authorization and limited to programs specified in the General Appropriations Act. In addition, the bill requires the DMS to prescribe procedures in connection with these contracts. According to the DMS, the impact of the additional workload can be absorbed within existing resources.⁸

⁸ Telephone conversation with the DMS staff on February 4, 2016.

VI. Technical Deficiencies:

Lines 67-68 of the bill provide: “Funding obtained for a high-quality program under this section is not a procurement item under s. 287.057, Florida Statutes.” It is unclear whether this provision is intended to deem the private entity’s efforts to obtain private investment not be subject to the competitive procurement process. If this is the intent, the provision is most likely unnecessary.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 287.05715 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Governmental Oversight and Accountability on January 26, 2016:**

- Revises the definition of “pay-for-success contract;”
- Revises the definition of “private entity;”
- Deletes provisions of the original bill regarding the DMS’s oversight of a pay-for-success contract program;
- Deletes provisions of the original bill regarding the Office of Economic and Demographic Research’s provision of information to state agencies;
- Authorizes a state agency to negotiate or enter into a pay-for-success contract with a private entity, contingent upon authorization in the General Appropriations Act;
- Provides that a pay-for-success contract initiated in one fiscal year may continue into subsequent fiscal years, and may be paid from appropriations authorized in any of those fiscal years;
- Specifies the duties of a state agency for a pay-for-success contract; and
- Requires the DMS to prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Bean

585-02625-16

20161200c1

A bill to be entitled

An act relating to the Pay-for-Success Contract Program; creating s. 287.05715, F.S.; defining terms; authorizing a state agency to enter into a pay-for-success contract with a private entity under certain circumstances; specifying the duties of the state agency; providing contract requirements; requiring the private entity to annually report to the state agency; providing that a high-quality program is not a procurement item; requiring the Department of Management Services to prescribe certain procedures by a specified date; providing an effective date.

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

Section 1. Section 287.05715, Florida Statutes, is created to read:

287.05715 Pay-for-success contracts.—

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

(a) "Pay-for-success contract" or "contract" means a contract between a state agency and a private entity to fund a high-quality program, as specified in the General Appropriations Act, to address a critical public problem with historically poor outcomes.

(b) "Private entity" means a private, not-for-profit organization exempt from federal income taxation pursuant to s. 501(c)3 of the Internal Revenue Code of 1986 which enters into a pay-for-success contract with a state agency and subcontracts with one or more entities to provide the actual services.

(c) "Success payment" means the amount paid to a private entity that meets the performance outcome measures established

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

585-02625-16

20161200c1

in the pay-for-success contract.

(2) Contingent upon authorization in the General Appropriations Act, a state agency may negotiate and enter into a pay-for-success contract with a private entity. The contract may be initiated in 1 fiscal year, may continue into subsequent fiscal years, and may be paid from appropriations authorized in any of those fiscal years. The state agency shall:

(a) Determine performance outcome measures to be included in the contract.

(b) Determine the data to be included in an annual report filed by a private entity pursuant to subsection (4).

(c) Select an independent, nationally recognized evaluator through a request for proposals process to annually evaluate the performance outcome measures specified in the contract.

(d) Ensure that participants in the program or their guardians have given permission to share participant data and signed an acknowledgment that the data may be shared with an independent evaluator for research and evaluation purposes, and maintain documentation of the required acknowledgements.

(3) A pay-for-success contract must:

(a) Be limited to programs specified in the General Appropriations Act.

(b) Require the private entity to underwrite or secure upfront capital from private funders, such as foundations, banks, or businesses, to fund the services provided under the subcontracts.

(c) Require an independent evaluator to determine whether the specified performance outcomes have been achieved.

(d) Require a success payment, consistent with the General

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

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61 Appropriations Act, only if the specified performance outcome
62 measures are achieved.

63 (e) Prohibit the private entity from receiving or viewing
64 any personally identifiable participant information.

65 (4) The private entity shall annually report to the state
66 agency for the duration of the contract period.

67 (5) Funding obtained for a high-quality program under this
68 section is not a procurement item under s. 287.057.

69 (6) By December 1, 2016, the department shall prescribe
70 procedures to be used by state agencies in connection with pay-
71 for-success contracts which are consistent with this section.

72 Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

1200
Bill Number (if applicable)

Topic Pay For Success

Amendment Barcode (if applicable)

Name AL Lawson

Job Title Lobbyist

Address 400 N Adams St

Phone 850-545-7024

Tall Fla 32301
City State Zip

Email allawsonjr@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Ed Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.10.2016

Meeting Date

SB 1200

Bill Number (if applicable)

Topic Pay-Per-Success Contract

Amendment Barcode (if applicable)

Name Alexandra Dominguez

Job Title Foundation for Florida's Future

Address 215 S. Monroe Street

Phone 786/955-7155

Tall FL 32301

City State Zip

Email alexandra@excelined.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Foundation for Florida's Future

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SB 1200

Bill Number (if applicable)

Topic Pay For Success

Amendment Barcode (if applicable)

Name Summer Pfeiffer

Job Title Vice President Govt Relations

Address 1801 Micoosulke Commons Dr.

Phone 850-921-0772

Tallahassee, FL 32317
City State Zip

Email summer.pfeiffer@chsf.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Children's Home Society of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2016

Meeting Date

SB 1200

Bill Number (if applicable)

Topic Relating to Pay-for-Success Contract Program

Amendment Barcode (if applicable)

Name Carol Bracy

Job Title Consultant

Address 403 E Park Avenue

Phone 850.577.0444

Street

Tallahassee

FL

32301

Email carol@ballardfl.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Nurse-Family Partnership

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/11/2016

Meeting Date

SB 1200

Bill Number (if applicable)

Topic Pay-for-Success Contract Program

Amendment Barcode (if applicable)

Name Heather Turnbull

Job Title Partner

Address 112 E Jefferson Street

Phone 850-681-9111

Street

Tallahassee

FL

32301

Email turnbullh@rubingroup.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Community Based Care of Central Florida, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 19, 2016

I respectfully request that **Senate Bill #1200**, relating to Pay-for-Success Contract Program, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: SB 1206
INTRODUCER: Senator Abruzzo
SUBJECT: Auditor General
DATE: February 10, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Favorable
2.	Loe	DeLoach	AGG	Recommend: Favorable
3.			AP	

I. Summary:

SB 1206 amends section 11.45, Florida Statutes, to require the Auditor General to conduct annually a performance audit of a randomly selected state agency.

The Auditor General has indicated that the bill will have no fiscal impact.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Background

Auditor General

The position of Auditor General is established by section 2, Article III of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.¹ The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.²

The Auditor General, before entering upon the duties of the office, must take the oath of office required of state officers by the State Constitution.³ At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at

¹ Section 11.42(2), F.S.

² Section 11.42(5), F.S.

³ Section 11.42(4), F.S.

least 10 years and must have no less than 10 years' experience in an accounting or auditing related field.⁴

To carry out his or her duties, the Auditor General must make all spending decisions within the annual operating budget approved by the President of the Senate and the Speaker of the House of Representatives.⁵ The Auditor General must employ qualified persons necessary for the efficient operation of the Auditor General's office, must fix their duties and compensation and, with the approval of the President of the Senate and Speaker of the House of Representatives, must adopt and administer a uniform personnel, job classification, and pay plan for employees.⁶

The headquarters of the Auditor General are at the state capital, but to facilitate auditing and to eliminate unnecessary travel, the Auditor General may establish field offices located outside the state capital. The Auditor General must be provided with adequate quarters to carry out the position's functions in the state capital and in other areas of the state.⁷

All payrolls and vouchers for the operations of the Auditor General's office must be submitted to the Chief Financial Officer for payment.⁸ The Auditor General may make and enforce reasonable rules and regulations necessary to facilitate authorized audits.⁹

The Auditor General must:¹⁰

- Conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee;
- Annually conduct a financial audit of state government;
- Annually conduct financial audits of all state universities and state colleges;
- Annually conduct financial audits of all accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census;
- Once every three years, conduct financial audits of the accounts and records of all district school boards in counties that have populations of 150,000 or more, according to the most recent federal decennial statewide census;
- At least every three years, conduct operational audits of the accounts and records of state agencies, state universities, state colleges, district school boards, Florida Clerks of Court Operations Corporation, water management districts, and the Florida School of Deaf and the Blind;
- At least every three years, conduct a performance audit of the local government financial reporting system, which means any statutory provision related to local government financial reporting;
- At least every three years, conduct a performance audit of the Department of Revenue's administration of the ad valorem tax laws;

⁴ Section 11.42(2), F.S.

⁵ Section 11.42(3)(a), F.S.

⁶ *Id.*

⁷ Section 11.42(6)(a), F.S.

⁸ Section 11.42(6)(b), F.S.

⁹ Section 11.42(7), F.S.

¹⁰ Section 11.45(2), F.S.

- Once every three years, review a sample of internal audit reports at each state agency¹¹ to determine compliance with the current Standards for Professional Practice of Internal Auditing or, if appropriate, government auditing standards;
- Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law; and
- Annually conduct operational audits of the accounts and records of eligible nonprofit scholarship-funding organizations receiving eligible contributions under the Florida Tax Credit Scholarship Program,¹² including any contracts for services with related entities, to determine compliance with the provisions of that program.

The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate regarding:¹³

- The accounts and records of any governmental entity created or established by law;
- The information technology programs, activities, functions, or systems of any governmental entity created or established by law;
- The accounts and records of any charter school created or established by law;
- The accounts and records of any direct-support organization or citizen support organization created or established by law;
- The public records associated with any appropriation made by the Legislature to a nongovernmental agency, corporation, or person;
- State financial assistance provided to any nonstate entity;¹⁴
- The Tobacco Settlement Financing Corporation;
- Any purchases of federal surplus lands for use as sites for correctional facilities;
- Enterprise Florida, Inc., including any of its boards, advisory committees, or similar groups created by Enterprise Florida, Inc., and programs;
- The Florida Development Finance Corporation or the capital development board or the programs or entities created by the board;
- The records pertaining to the use of funds from voluntary contributions on a motor vehicle registration application or on a driver's license application;
- The records pertaining to the use of funds from the sale of specialty license plates;
- The acquisition and divestitures related to the Florida Communities Trust Program;
- The Florida Water Pollution Control Financing Corporation;
- The school readiness program, including the early learning coalitions;
- CareerSource Florida, Inc., or other programs or entities created by CareerSource Florida, Inc.;

¹¹ Section 20.055(1), F.S., defines "state agency" as each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, The Agency for State Technology, the Office of Early Learning, and the state courts system.

¹² Section 1002.395, F.S.

¹³ Section 11.45(3), F.S.

¹⁴ Section 215.97, F.S., defines "nonstate entity" as a local government entity, nonprofit organization, or for-profit organization that receives state financial assistance.

- The corporation under contract with the Department of Business and Professional Regulation to provide administrative, investigative, examination, licensing, and prosecutorial support services;
- The Florida Engineers Management Corporation;
- The books and records of any permit holder that conducts race meetings or jai alai exhibitions;
- The corporation known as the Prison Rehabilitative Industries and Diversified Enterprise, Inc., or PRIDE Enterprises;
- The Florida Virtual School;
- Virtual education providers receiving state funds or funds from local ad valorem taxes; and
- The accounts and records of a nonprofit scholarship-funding organization participating in a state sponsored scholarship program authorized by chapter 1002, F.S.

Auditor General Reports

Various provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.¹⁵ The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee an annual report by December 1st; such report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.¹⁶ In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.¹⁷

Florida Tax Credit Scholarship Program

The Florida Tax Credit Scholarship Program (FTC Program) provides scholarships to eligible low-income students for private school tuition and fees, transportation expenses to a Florida public school located outside of the school district in which the student resides, or developmental research laboratory school.¹⁸ The FTC Program is funded with contributions to private nonprofit scholarship-funding organizations (SFOs) from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax; severance taxes on oil and gas production; self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine, and spirits.¹⁹ The tax credit is equal to 100 percent of the eligible contributions made.²⁰

The Department of Education (DOE) must annually verify the eligibility of expenditures for scholarships under the FTC Program using specified audit requirements.²¹

¹⁵ Section 11.45(7)(f), F.S.

¹⁶ Section 11.45(7)(h), F.S.

¹⁷ *Id.*

¹⁸ Section 1002.395(3), (5), and (6)(d), F.S.

¹⁹ Section 1002.395(1) and (5), F.S.

²⁰ Sections 220.1875 and 1002.395(5), F.S.

²¹ Section 1002.395(9)(d), F.S.

III. Effect of Proposed Changes:

Section 1 amends section 11.45, F.S., to require the Auditor General to annually conduct a performance audit of a randomly selected state agency.

Section 2 amends section 1002.395, F.S., to conform a cross-reference regarding the DOE's obligation to verify eligibility of expenditures for scholarships under the Florida Tax Credit Scholarship Program using specified audit requirements.

Section 3 provides an effective date of July 1, 2016.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Auditor General has indicated that the bill will have no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 11.45 and 1002.395 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Abruzzo

25-01312-16

20161206__

1 A bill to be entitled
 2 An act relating to the Auditor General; amending s.
 3 11.45, F.S.; requiring the Auditor General to annually
 4 conduct a performance audit of a randomly selected
 5 state agency; amending s. 1002.395, F.S.; conforming a
 6 cross-reference; providing an effective date.

7

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

9

10 Section 1. Present paragraphs (g) through (k) of subsection
 11 (2) of section 11.45, Florida Statutes, are redesignated as
 12 paragraphs (h) through (l), respectively, and a new paragraph
 13 (g) is added to that subsection, to read:

14 11.45 Definitions; duties; authorities; reports; rules.—

15 (2) DUTIES.—The Auditor General shall:

16 (g) Annually conduct a performance audit of a randomly
 17 selected state agency.

18

19 The Auditor General shall perform his or her duties
 20 independently but under the general policies established by the
 21 Legislative Auditing Committee. This subsection does not limit
 22 the Auditor General's discretionary authority to conduct other
 23 audits or engagements of governmental entities as authorized in
 24 subsection (3).

25 Section 2. Paragraph (d) of subsection (9) of section
 26 1002.395, Florida Statutes, is amended to read:

27 1002.395 Florida Tax Credit Scholarship Program.—

28 (9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of
 29 Education shall:

30 (d) Annually verify the eligibility of expenditures as
 31 provided in paragraph (6) (d) using the audit required by
 32 paragraph (6) (m) and s. 11.45(2)(l) ~~11.45(2)(k)~~.

Page 1 of 2

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

25-01312-16

20161206__

33

Section 3. This act shall take effect July 1, 2016.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and Human
Services
Communications, Energy, and Public Utilities
Community Affairs
Fiscal Policy
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

SENATOR JOSEPH ABRUZZO
Minority Whip
25th District

February 1st, 2016

The Honorable Alan Hays
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays:

I respectfully request **Senate Bill 1206, Auditor General**, be considered for placement on the Appropriations Subcommittee on General Government agenda. This piece of legislation will require the Auditor General to conduct a performance audit of a randomly selected state agency annually.

Thank you in advance for your consideration. Please let me know if I can provide you with any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "JA".

Joseph Abruzzo

Cc: Jamie DeLoach, *Staff Director*

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flisenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: SB 1226

INTRODUCER: Senator Ring

SUBJECT: Administrative Procedures

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1226 requires a statement of estimated regulatory costs (SERC) to include the adverse impacts and regulatory costs estimated to occur five years after the effective date of a rule. If a portion of the rule is not fully implemented on the effective date of the rule, the SERC must include the adverse impacts and regulatory costs expected to occur within the first five years after implementation of that portion of the rule.

With these changes to the SERC, more administrative rules may exceed the cost thresholds (\$1 million within five years), thus requiring more rules to be subject to ratification by the legislature prior to taking effect.

This bill has an indeterminate fiscal impact.

The bill takes effect July 1, 2016.

II. Present Situation:

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.¹ Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”² a rule. Agencies do not have discretion as to whether to engage in rulemaking.³ To adopt a rule an agency must have a

¹ Section 120.52(16), F.S.

² Section 120.52(17), F.S.

³ Section 120.54(1)(a), F.S.

general grant of authority to implement a specific law by rulemaking.⁴ The statutory authority for rule making must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁵

An agency begins the formal rulemaking process by filing a notice of the proposed rule,⁶ which is published by the Department of State in the Florida Administrative Register.⁷ The notice must provide certain information, including the text of the proposed rule, and a summary of the agency's SERC if one is prepared. The public may also provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.⁸

An agency is required to prepare a SERC if the proposed rule will have an adverse impact on small businesses or if it will increase regulatory costs more than \$200,000 (in aggregate) within one year after implementation.⁹

The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.¹⁰ The economic analysis, mandated for each SERC, must analyze a rule's potential impact of over \$1 million over a five year period after the rule goes into effect. A SERC must provide one of the following analyses:

- The rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment;¹¹
- The likely adverse impact on business competitiveness,¹² productivity, or innovation.¹³
- The analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.¹⁴

If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the five year period, the rule cannot go into effect until ratified by the Legislature.¹⁵ Legislative ratification is not required for adoption of any of the following types of rules: federal standards, amendments to the Florida Building Code or amendments to the Florida Building Code.¹⁶

A SERC must also contain estimates of the number of people and entities effected by the proposed rule; cost to the agency and any other governmental entity for implementing the proposed rule; and transactional costs likely to be incurred by people, entities, and governmental

⁴ Sections 120.52(8) & 120.536(1), F.S.

⁵ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008). *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla 1st DCA 2001).

⁶ Section 120.54(3)(a)1, F.S.

⁷ Section 120.55(1)(b)2, F.S.

⁸ Sections 120.54(3)(a)1., and 120.541(1)(a), F.S.

⁹ Section 120.541(1)(a), F.S.

¹⁰ Section 120.541(2)(a), F.S.

¹¹ Section 120.541(2)(a)1., F.S.

¹² This factor includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹³ Section 120.541(2)(a)2., F.S.

¹⁴ Section 120.541(2)(a)3., F.S.

¹⁵ Section 120.541(3), F.S.

¹⁶ Section 120.541(4), F.S.

agencies for compliance.¹⁷ Finally, a SERC must also contain an analysis of the proposed rule's impact on small businesses and local governments.¹⁸

III. Effect of Proposed Changes:

The bill requires a SERC to include the adverse impacts and regulatory costs estimated to occur five years after the effective date of a rule. If a portion of the rule is not fully implemented on the effective date of the rule, the SERC must include the adverse impacts and regulatory costs expected to occur within the first five years after implementation of that portion of the rule.

With these changes to the SERC, more administrative rules may exceed the cost thresholds (\$1 million within five years), thus requiring more rules to be subject to ratification by the legislature prior to taking effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1226 may provide an enhanced estimation of economic impacts of agency rules and an enhanced opportunity of local government and private entities to participate in rulemaking and in estimating regulatory costs.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. Currently, state agencies are required to comply with notice, publication, and hearing requirements for preparing SERCs. The bill

¹⁷ Section 120.541(2)(b)-(d), F.S.

¹⁸ Section 120.541(2)(e), F.S.

provides additional requirements related to SERCs, which may require agencies to complete more SERCs. Also, the recognition of additional costs in a SERC may increase the number of administrative rules subject to legislative ratification prior to their becoming effective. Compliance with these additional requirements may require agencies to devote more resources to rulemaking.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Agencies may experience some difficulty making estimates for projected costs associated with unimplemented portions of a rule.

Additional administrative rules may be subject to ratification by the Legislature prior to taking effect because the recognition of additional costs may result in rules exceeding the adverse impacts and regulatory cost thresholds. To the extent the ratification process delays the full implementation of a legislatively mandated policy or program, the intent of the Legislature regarding that particular policy or program may be frustrated. The delay may be upwards of 14 months (in the case of a rule that is identified in May of one year and not being ratified until the next legislative session). On the other hand, a better estimate of the full costs and impacts of the policy or program on the private sector will be available for review by the Legislature.

VIII. Statutes Affected:

This bill substantially amends section 120.541 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Ring

29-01538-16

20161226__

1 A bill to be entitled
2 An act relating to administrative procedures; amending
3 s. 120.541, F.S.; providing additional requirements
4 for the calculation of estimated adverse impacts and
5 regulatory costs; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Subsection (5) is added to section 120.541,
10 Florida Statutes, to read:

11 120.541 Statement of estimated regulatory costs.—
12 (5) For purposes of subsections (2) and (3), adverse
13 impacts and regulatory costs likely to occur within 5 years
14 after implementation of the rule include adverse impacts and
15 regulatory costs estimated to occur within 5 years after the
16 effective date of the rule. However, if any provision of the
17 rule is not fully implemented upon the effective date of the
18 rule, the adverse impacts and regulatory costs associated with
19 such provision must be adjusted to include any additional
20 adverse impacts and regulatory costs estimated to occur within 5
21 years after implementation of such provision.

22 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Children, Families, and Elder Affairs
Commerce and Tourism

SENATOR JEREMY RING
29th District

February 4, 2016

The Honorable Alan Hays
Appropriations Subcommittee on General Government
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Mr. Chairman,

I am writing to respectfully request your cooperation in placing Senate Bill 1226, relating to Administrative Procedures, on the Appropriations Subcommittee on General Government agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Jamie DeLoach, Staff Director
Lisa Waddell, Committee Administrative Assistant

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: SB 1228

INTRODUCER: Senator Detert

SUBJECT: Cottage Food Operations

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1228 increases the maximum annual gross sales of cottage food products from \$15,000 to \$30,000 for a cottage food operation to maintain exempt status from state permitting requirements.

The bill has an indeterminate fiscal impact.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Florida Cottage Food Operation Law

Chapter 2011-205, Laws of Florida, includes provisions regarding cottage food operations in the state.¹ A cottage food operation is a natural person² who produces or packages cottage food products at his or her residence and sells such products in accordance with cottage food operations law. A cottage food product is food that is not potentially hazardous food, as defined by the Department of Agriculture and Consumer Services (DACS) rule, and sold by a cottage food operation.

The DACS defines potentially hazardous foods as a food that requires time/temperature control for safety (TCS) to limit pathogenic micro-organism growth or toxin formation; an animal food that is raw or heat-treated; a plant food that is heat treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic micro-organism growth or toxin formation, or

¹ See ch. 2011-205, s. 21, L.O.F., and s. 500.80, F.S.

² “Natural person” is undefined for purposes of ch. 500, F.S. *Black’s Law Dictionary* (10th ed. 2014), defines natural person as a human being. This definition would exclude artificial or juridical persons.

garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic micro-organism growth or toxin formation.³ Examples of foods that could be cottage food products (and are not, therefore, potentially hazardous foods) are:

- Loaf breads, rolls, biscuits;
- Cakes, pastries, and cookies;
- Candies and confections;
- Honey;
- Jams, jellies, and preserves;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars; and
- Popcorn, popcorn balls.⁴

Current law allows a cottage food operation to be exempt from state permitting requirements⁵ if the operation complies with cottage food law and has annual gross sales of cottage food products that do not exceed \$15,000. The annual gross sales of a cottage food operation include all sales of products from any location, regardless of the types of products sold or number of persons involved in the operation. Any such operation must provide the DACS written documentation to verify annual gross sales.

A cottage food operation is prohibited from selling, or offering to sell, cottage food products over the Internet, by mail order, or at wholesale.

Cottage food products must be prepackaged with a label that contains:

- The name and address of the cottage food operation;
- The name of the cottage food product;
- The ingredients of the cottage food product, in descending order of predominance by weight;
- The net weight or net volume of the cottage food product;
- Allergen information as specified by federal labeling requirements;
- Appropriate nutritional information (if any nutritional claim is made) as specified by federal labeling requirements;⁶ and
- The statement, “Made in a cottage food operation that is not subject to Florida’s food safety regulations” printed in 10-point type in a color in a clear contrast to the background of the label.

³ See DACS, *Division of Food Safety: Cottage Food Legislation Signed into Law*, February 2014. Available at: http://www.freshfromflorida.com/content/download/42358/891067/CottageFoodAdvisoryChanges_Feb_2014_withFormNumber.pdf (last visited January 19, 2016).

⁴ *Id.*

⁵ Section 500.12, F.S.

⁶ See C.F.R. Title 21, Part 101. Available at: <http://www.ecfr.gov/cgi-bin/text-idx?SID=b8a6ba2f29a50685c15ebddd8bbd56aa&mc=true&node=pt21.2.101&rgn=div5> (last visited January 19, 2016).

Additionally, current law provides that:

- A cottage food operation may only sell cottage food products stored on the premises of the operation;
- Cottage food operations are not exempt from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations; and
- A cottage food operation must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person's residence.

The DACS may investigate complaints that a cottage food operation has violated an applicable provision of state food products law⁷ or rule adopted under such law. Upon receiving a complaint, a DACS authorized officer or employee may enter and inspect the cottage food operation's premises to determine compliance applicable to state law and departmental rule. An operation's refusal to permit an authorized officer or employee to enter and inspect the premises is grounds for disciplinary action under s. 500.121, F.S.⁸

State law regarding cottage food operations does not apply to any person operating under a food permit issued pursuant to s. 500.12, F.S.⁹

Cottage Food Sales in Other States

Many states have adopted laws regarding cottage food operations and production, including Alabama in 2014, Texas and California in 2013, and Michigan in 2010. While regulation varies from state to state, many states have adopted limits to annual gross sales or income from cottage food products including:

- Alabama and Michigan limit annual gross income from sales to \$20,000;
- Texas limits annual gross sales to \$50,000; and
- California limited annual gross sales starting with \$35,000 in 2013, \$45,000 in 2014, and \$50,000 from 2015 and beyond.

III. Effect of Proposed Changes:

SB 1228 increases the maximum annual gross sales of cottage food products from \$15,000 to \$30,000 for a cottage food operation to maintain exempt status from state permitting requirements.

The bill does not remove or change other requirements in current law, for a cottage food operation to be exempt from state permitting requirements.

The bill takes effect July 1, 2016.

⁷ Chapter 500, F.S.

⁸ Disciplinary action includes suspension procedures provided for in s. 500.12, F.S., and may include an administrative fine in the Class II category pursuant to s. 570.971, F.S.

⁹ Permits under this section are required for any person who operates a food establishment or retail food store.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact of SB 1228 on the private sector is indeterminate.

C. Government Sector Impact:

The fiscal impact on the DACS is indeterminate.

The Division of Food Safety within the DACS permits 3,067 “limited sales” establishments that operate out of a food production facility and may produce potentially hazardous foods. These permits are issued at a cost of \$130 annually. Some of these establishments, who would otherwise qualify as a cottage food operation, may choose to operate out of their residence so as to no longer require a “limited sales” permit and thus take advantage of the increase in maximum allowable annual gross sales. The establishments would still need permitting if they are not in compliance with all other requirements of s. 500.80, F.S. The DACS reported that a decrease in revenue associated with issued permits could have a negative fiscal impact to the General Inspection Trust Fund of \$398,710, if all “limited sales” establishments opt to become cottage food operators.¹⁰

VI. Technical Deficiencies:

None.

¹⁰ DACS Division of Food Safety, *Senate Bill #1228: Relating to Cottage Food Operations*, January 19, 2016, (on file with the Commerce and Tourism Committee).

VII. Related Issues:

The DACS Division of Food Safety noted that in incidences of food-borne illnesses occurring in cottage food products, the division cannot conduct “trace-back” or “trace-forward” activities since cottage food operations are not registered with the DACS and are not required to maintain a listing of where their food products are sold.¹¹

VIII. Statutes Affected:

This bill substantially amends section 500.80 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹¹ *Id.*

By Senator Detert

28-01092A-16

20161228__

1 A bill to be entitled
2 An act relating to cottage food operations; amending
3 s. 500.80, F.S.; increasing the annual gross sales
4 limitation for exempting cottage food operations from
5 certain food and building permitting requirements;
6 providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Paragraph (a) of subsection (1) of section
11 500.80, Florida Statutes, is amended to read:

12 500.80 Cottage food operations.—

13 (1)(a) A cottage food operation must comply with the
14 applicable requirements of this chapter but is exempt from the
15 permitting requirements of s. 500.12 if the cottage food
16 operation complies with this section and has annual gross sales
17 of cottage food products that do not exceed \$30,000 ~~\$15,000~~.

18 Section 2. This act shall take effect July 1, 2016.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: SB 1270

INTRODUCER: Senator Simpson

SUBJECT: Pesticide Registration

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1270 eliminates a requirement that a registrant pay a supplemental registration fee for each brand of pesticide that contains an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit.

The supplemental pesticide registration fee was created by the 2009 Legislature to defray the cost of the Chemical Residue Laboratory (lab) within the Division of Food Safety in the Department of Agriculture and Consumer Services (DACS). Prior to the creation of the fee, the DACS received general revenue to support the lab. Currently, revenues from the supplemental pesticide registration fee support the operations of the lab.

The bill has a significant impact on state funds. The DACS will require \$1,801,131 in recurring general revenue to support the Chemical Residue Lab in Fiscal Year 2016-2017, due to the elimination of the supplemental pesticide registration fee provided in this bill.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Each brand of pesticide distributed, sold, or offered for sale in this state must be registered with the DACS. The registrant must pay a biennial fee set at \$700 effective January 1, 2009, which is to be deposited into the General Inspection Trust Fund.¹ Currently, there are approximately 15,000 pesticide brands registered with the DACS that are subject to this biennial fee.²

¹ S. 487.041(1), F.S.

² Email from Grace Lovett, Director, Office of Legislative Affairs, Florida Department of Agriculture and Consumer Affairs, (January 14, 2016) (on file with the Senate Committee on Agriculture).

In addition, since January 1, 2009, a supplemental biennial registration fee of \$630 is required of registrants of pesticides that contain an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit in Title 40 Code of Federal Regulations, (CFR) part 180.

Revenue from this supplemental fee is used by the DACS for testing pesticides for food safety and is the primary source of funding for the operations of the Chemical Residue Laboratory (lab) within the Division of Food Safety. Prior to January 1, 2009, this testing program received funding from general revenue as a public health program.³ Currently, there are approximately 6,700 pesticide brands registered with the DACS that are subject to this biennial supplemental fee.⁴

The lab is responsible for the chemical analysis of poisonous or deleterious chemical residues remaining in or on human food produced or marketed in Florida, as well as for the regulatory enforcement of federal pesticide and antibiotic residue tolerances and guidelines for raw agricultural produce.⁵ Each year the lab performs more than 400,000 analyses on 3,000 samples.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 487.041, F.S., to eliminate the requirement that a registrant pay a biennial fee of \$630 for each registered brand of pesticide containing an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit in Title 40 CFR, part 180.

Section 2 provides that this bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ Division of Food Safety analysis of SB 1270, <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=7022&yr=2016>.

⁴ Email from Grace Lovett (January 14, 2016).

⁵ See <http://www.freshfromflorida.com/Divisions-Offices/Food-Safety/Bureaus-and-Sections/Bureau-of-Chemical-Residue-Laboratory>. (Website last visited 1/12/2016).

⁶ Ibid.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

See Government Sector Impact.

B. Private Sector Impact:

SB 1270 will have a positive fiscal impact on individuals who distribute, sell or offer to sell pesticides due to the elimination of the biennial supplemental pesticide registration fee.

C. Government Sector Impact:

The bill has a significant impact on state funds. The DACS estimates a recurring reduction in revenue in the General Inspection Trust Fund of \$1,842,876 generated from the elimination of the supplemental pesticide brand registration fee beginning in Fiscal Year 2016-2017. Prior to the creation of the supplemental fee in 2009, the DACS received general revenue to support the Chemical Residue Laboratory (lab). Currently, the DACS expends revenues received from the supplemental fee to fund operations of the lab. There is no appropriation from the General Revenue Fund to off-set the loss in revenue that supports the lab's operations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 487.041 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Simpson

18-00976-16

20161270__

A bill to be entitled

An act relating to pesticide registration; amending s. 487.041, F.S.; deleting provisions relating to supplemental registration fees for certain pesticides that contain active ingredients for which the United States Environmental Protection Agency has established food tolerance limits; deleting a provision requiring the department to publish a list of certain active ingredients; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 487.041, Florida Statutes, are amended to read:

487.041 Registration.—

(1) (a) Effective January 1, 2009, each brand of pesticide, as defined in s. 487.021, which is distributed, sold, or offered for sale, except as provided in this section, within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered in the office of the department, and such registration shall be renewed biennially. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

1. The name, business mailing address, and street address of the registrant.

2. The name of the brand of pesticide.

3. An ingredient statement and a complete current copy of the labeling accompanying the brand of pesticide, which must conform to the registration, and a statement of all claims to be made for it, including directions for use and a guaranteed

Page 1 of 6

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

18-00976-16

20161270__

analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient."

(b) Effective January 1, 2009, for the purpose of defraying expenses of the department in connection with carrying out the provisions of this part, each registrant shall pay a biennial registration fee for each registered brand of pesticide. The registration of each brand of pesticide shall cover a designated 2-year period beginning on January 1 of each odd-numbered year and expiring on December 31 of the following year.

(c) Each registration issued by the department to a registrant for a period beginning in an odd-numbered year shall be assessed a fee of \$700 per brand of pesticide and a fee of \$200 for each special local need label and experimental use permit, and the registration shall expire on December 31 of the following year. Each registration issued by the department to a registrant for a period beginning in an even-numbered year shall be assessed a fee of \$350 per brand of pesticide and fee of \$100 for each special local need label and experimental use permit, and the registration shall expire on December 31 of that year.

~~(d) 1. Effective January 1, 2009, in addition to the fees assessed pursuant to paragraphs (b) and (c), for the purpose of defraying the expenses of the department for testing pesticides for food safety, each registrant shall pay a supplemental biennial registration fee for each registered brand of pesticide that contains an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit in 40 C.F.R. part 180. The department shall biennially~~

Page 2 of 6

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

18-00976-16 20161270__

62 ~~publish by rule a list of the pesticide active ingredients for~~
 63 ~~which a brand of pesticide is subject to the supplemental~~
 64 ~~registration fee.~~

65 ~~2. Each registration issued by the department to a~~
 66 ~~registrant for a period beginning in an odd numbered year shall~~
 67 ~~be assessed a supplemental registration fee of \$630 per brand of~~
 68 ~~pesticide that is subject to the fee pursuant to subparagraph 1.~~
 69 ~~Each registration issued by the department to a registrant for a~~
 70 ~~period beginning in an even-numbered year shall be assessed a~~
 71 ~~supplemental registration fee of \$315 per brand of pesticide~~
 72 ~~that is subject to the fee pursuant to subparagraph 1. The~~
 73 ~~department shall retroactively assess the supplemental~~
 74 ~~registration fee for each brand of pesticide that registered on~~
 75 ~~or after January 1, 2009, and that is subject to the fee~~
 76 ~~pursuant to subparagraph 1.~~

77 (d)(e) All revenues collected, less those costs determined
 78 by the department to be nonrecurring or one-time costs, shall be
 79 deferred over the 2-year registration period, deposited in the
 80 General Inspection Trust Fund, and used by the department in
 81 carrying out the provisions of this chapter. ~~Revenues collected~~
 82 ~~from the supplemental registration fee may also be used by the~~
 83 ~~department for testing pesticides for food safety.~~

84 (e)(f) If the renewal of a brand of pesticide, including
 85 the special local need label and experimental use permit, is not
 86 filed by January 31 of the renewal year, an additional fee of
 87 \$25 per brand of pesticide shall be assessed per month and added
 88 to the original fee. This additional fee may not exceed \$250 per
 89 brand of pesticide. The additional fee must be paid by the
 90 registrant before the renewal certificate for the registration

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91 of the brand of pesticide is issued. The additional fee shall be
 92 deposited into the General Inspection Trust Fund.

93 (f)(g) This subsection does not apply to distributors or
 94 retail dealers selling brands of pesticide if such brands of
 95 pesticide are registered by another person.

96 (g)(h) All registration fees, including ~~supplemental fees~~
 97 ~~and late fees~~, are nonrefundable.

98 (h)(i) For any currently registered pesticide product brand
 99 that undergoes labeling revisions during the registration
 100 period, the registrant shall submit to the department a copy of
 101 the revised labeling along with a cover letter detailing such
 102 revisions before the sale or distribution in this state of the
 103 product brand with the revised labeling. If the labeling
 104 revisions require notification of an amendment review by the
 105 United States Environmental Protection Agency, the registrant
 106 shall submit an additional copy of the labeling marked to
 107 identify those revisions.

108 (i)(j) Effective January 1, 2013, all payments of any
 109 pesticide registration fees, including ~~supplemental fees and~~
 110 ~~late fees~~, shall be submitted electronically using the
 111 department's Internet website for registration of pesticide
 112 product brands.

113 (2) The department shall adopt rules governing the
 114 procedures for the registration of a brand of pesticide and, for
 115 the review of data submitted by an applicant for registration of
 116 the brand of pesticide, ~~and for biennially publishing the list~~
 117 ~~of active ingredients for which a brand of pesticide is subject~~
 118 ~~to the supplemental registration fee pursuant to subparagraph~~
 119 ~~(1)(d)1.~~ The department shall determine whether the brand of

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120 pesticide should be registered, registered with conditions, or
121 tested under field conditions in this state. The department
122 shall determine whether each request for registration of a brand
123 of pesticide meets the requirements of current state and federal
124 law. The department, whenever it deems it necessary in the
125 administration of this part, may require the manufacturer or
126 registrant to submit the complete formula, quantities shipped
127 into or manufactured in the state for distribution and sale,
128 evidence of the efficacy and the safety of any pesticide, and
129 other relevant data. The department may review and evaluate a
130 registered pesticide if new information is made available that
131 indicates that use of the pesticide has caused an unreasonable
132 adverse effect on public health or the environment. Such review
133 shall be conducted upon the request of the State Surgeon General
134 in the event of an unreasonable adverse effect on public health
135 or the Secretary of Environmental Protection in the event of an
136 unreasonable adverse effect on the environment. Such review may
137 result in modifications, revocation, cancellation, or suspension
138 of the registration of a brand of pesticide. The department, for
139 reasons of adulteration, misbranding, or other good cause, may
140 refuse or revoke the registration of the brand of any pesticide
141 after notice to the applicant or registrant giving the reason
142 for the decision. The applicant may then request a hearing,
143 pursuant to chapter 120, on the intention of the department to
144 refuse or revoke registration, and, upon his or her failure to
145 do so, the refusal or revocation shall become final without
146 further procedure. The registration of a brand of pesticide may
147 not be construed as a defense for the commission of any offense
148 prohibited under this part.

Page 5 of 6

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

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149 Section 2. This act shall take effect July 1, 2016.

Page 6 of 6

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

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

1270

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title _____

Address 310 W College Ave

Phone 850-278-1296

Street

TCH FL 32301

City

State

Zip

Email Jim.e.magnolia@strategiesllc.com

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Florida Fertilizer & Agrichemical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16
Meeting Date

SB-1270
Bill Number (if applicable)

Topic Pesticide Fees

Amendment Barcode (if applicable)

Name Butch Calhoun

Job Title _____

Address 119 S. Monroe, Suite 300
Street
Tallahassee FL 32301
City State Zip

Phone 521-0455

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Fruit & Vegetable Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14

Meeting Date

SB 1270

Bill Number (if applicable)

Topic Supplemental Pesticide Registration Fee

Amendment Barcode (if applicable)

Name Alex Lucas

Job Title _____

Address 207 Park Avenue West

Phone (850) 577-6500

Street

Tallahassee

FL

Email alucas@asrlegal.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Fertilizer & Agrochemical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1270

Bill Number (if applicable)

Meeting Date

Topic Pesticide Registration

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Consultant

Address 242 Office Plaza Dr
Tallahassee FL 32301
Street City State Zip

Phone 850-766-8806

Email lisa@henningconsulting

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Pest Management Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 11

Meeting Date

1270

Bill Number (if applicable)

Topic Pesticide Registration

Amendment Barcode (if applicable)

Name Chris Hansen

Job Title Ballard Partners

Address 403 E. Paril Ave

Phone 577-0444

Tallahassee FL 32312
City State Zip

Email Chansene.Ballard@fl.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing BAYER Corp.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Environmental Preservation and Conservation,
Vice Chair
Appropriations Subcommittee on General Government
Finance and Tax
Judiciary
Transportation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON
18th District

January 19, 2016

The Honorable Alan Hays
Senate Appropriations Subcommittee on General Government, Chair
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays:

I respectfully request that Senate Bill 1270, relating to *Pesticide Registration*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson, State Senator, 18th District

CC: Appropriations Subcommittee on General Government Staff

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: PCS/SB 1282 (389224)

INTRODUCER: Appropriations Subcommittee on General Government and Senator Dean

SUBJECT: Fish and Wildlife Conservation Commission

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Favorable
2.	Betta	DeLoach	AGG	Recommend: Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1282 revises statutes within chapter 379, F.S., to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within with the four-level penalty structure. The bill clarifies existing penalties and revises other penalties. Additionally, the bill:

- Offers violators of recreational hunting, freshwater fishing, and saltwater fishing the option of purchasing the respective license or permit rather than paying the cost of such license or permit without actually receiving it in addition to a civil penalty.
- Expands the scope of the civil penalty for illegally killing, taking, possessing, or selling game or fur-bearing animals, while committing burglary or trespassing to include illegally killing, taking, possessing, or selling all fish and wildlife.
- Clarifies that a person possessing certain marine turtle species, hatchlings, or the nests of such marine turtle species commits a third degree felony.
- Clarifies that spearfishing is authorized by the Fish and Wildlife Conservation Commission rule.
- Authorizes, rather than requires, the commission to retain an administrative fee on donations provided by application to the Southeastern Guide Dogs, Inc.

By changing the penalties and allowing the violator an option to obtain a permit or license to bring the individual into compliance with law, the bill has an estimated negative fiscal impact of \$85,456 to the Clerks of the Circuit Court and a positive fiscal impact of \$50,806 to the FWC.

II. Present Situation:

The Florida Constitution was amended in 1998 to create the Florida Fish and Wildlife Conservation Commission (FWC).¹ The constitution grants the FWC both the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.² The FWC additionally has regulatory and executive powers with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission are required to be prescribed by general law.³

Certain regulatory functions from three separate agencies, the Game and Freshwater Fish Commission, the Marine Fisheries Commission, and the Department of Environmental Protection, were combined to create the FWC.⁴ Beginning in 2005, FWC staff began reviewing all recreational wildlife, freshwater fishing, and saltwater fishing penalties, with the goal of proposing a four-level penalty structure to the Legislature which would provide consistency.⁵ In 2006, the Legislature adopted the recommended structure, which provided four levels of classifying violations based upon the seriousness of the violation along with commensurate penalties for each violation.⁶

In 2008, chapter 370, F.S., relating to the state's marine fisheries, and chapter 372, F.S., relating to the state's wildlife and freshwater fisheries statutes, were consolidated into chapter 379, F.S.⁷ The four-level penalty structure was retained, but revised to bring in the majority of FWC's recreational hunting, freshwater fishing, and saltwater fishing violations into one section. Section 379.401, F.S., provides a listing of penalties and violations by level.⁸

Level One Violations

A person commits a Level One violation if he or she violates any of the following provisions:

- Rules or orders relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by the commission.
- Rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the FWC.
- Rules or orders relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.
- Rules or orders relating to vessel size or specifying motor restrictions on specified water bodies.
- Section 379.354(1)-(15), F.S., providing for recreational licenses to hunt, fish, and trap.

¹ FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 2 (Oct. 23, 2015)(on file with the Senate Committee on Environmental Preservation and Conservation).

² Section 9, Art. IV, Fla. Const.

³ *Id.*

⁴ FWC at 3.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Section 379.401, F.S.

- Section 379.3581, F.S., providing hunter safety course requirements.
- Section 379.3003, F.S., prohibiting deer hunting unless required clothing is worn.⁹

The penalties for Level One violations are as follows:

Level One violation	Type of Infraction	Civil Penalty
1 st offense for failure to possess the required license or permit under s. 379.354, F.S.	Noncriminal ¹⁰	\$50 plus the cost of the license or permit ¹¹
2 nd offense for failure to possess the required license or permit under s. 379.354, F.S., within 36 months of 1 st offense.	Noncriminal ¹²	\$100 plus the cost of the license or permit ¹³
1 st offense not involving s. 379.354, F.S., license or permit requirements.	Noncriminal ¹⁴	\$50 ¹⁵
2 nd offense not involving s. 379.354, F.S., license or permit ¹⁶ requirements within 36 months of 1 st offense.	Noncriminal ¹⁷	\$100 ¹⁸

Level Two Violations

A person commits a Level Two violation if he or she violates any of the following provisions:

- Rules or orders relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
- Rules or orders establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
- Rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
- Rules or orders relating to the feeding of saltwater fish.
- Rules or orders relating to landing requirements for freshwater fish or saltwater fish.
- Rules or orders relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
- Rules or orders relating to tagging requirements for wildlife and fur-bearing animals.
- Rules or orders relating to the use of dogs for the taking of wildlife.
- Rules or orders which are not otherwise classified.
- Rules or orders prohibiting the unlawful use of finfish traps.
- All prohibitions of ch. 379, F.S., which are not otherwise classified.
- Section 379.33, F.S., prohibiting the violation of or noncompliance with commission rules.
- Section 379.407(7), F.S., prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.
- Section 379.2421, F.S., prohibiting the obstruction of waterways with net gear.

⁹ Section 379.401(1)(a), F.S.

¹⁰ Section 379.401(1)(b), F.S.

¹¹ Section 379.401(1)(c)1., F.S.

¹² Section 379.401(1)(b), F.S.

¹³ Section 379.401(1)(c)2., F.S.

¹⁴ Section 379.401(1)(b), F.S.

¹⁵ Section 379.401(1)(d)1., F.S.

¹⁶ Section 379.401(1)(d)2., F.S.

¹⁷ Section 379.401(1)(b), F.S.

¹⁸ Section 379.401(1)(d)2., F.S.

- Section 379.413, F.S., prohibiting the unlawful taking of bonefish.
- Section 379.365(2)(a) and (b), F.S., prohibiting the possession or use of stone crab traps without trap tags and theft of trap contents or gear.
- Section 379.366(4)(b), F.S., prohibiting the theft of blue crab trap contents or trap gear.
- Section 379.3671(2)(c), F.S., prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.
- Section 379.357, F.S., prohibiting the possession of tarpon without purchasing a tarpon tag.
- Section 379.105, F.S., prohibiting the intentional harassment of hunters, fishers, or trappers.¹⁹

The penalties for Level Two violations are as follows:

Level 2 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense	2 nd Degree Misdemeanor ²⁰	Max. \$500 or Max. 60 days	None
2 nd offense within three years of previous Level Two violation (or higher)	1 st Degree Misdemeanor ²¹	Min. \$250; Max. \$1000 or Max. one year	None
3 rd offense within five years of two previous Level Two violations (or higher)	1 st Degree Misdemeanor ²²	Min. \$500; Max. \$1000 or Max. one year	Max. suspension of license for one year
4 th offense within ten years of three previous Level Two violations (or higher)	1 st Degree Misdemeanor ²³	Min. \$750; Max. \$1000 or Max. one year	Max. suspension of license for three years

Level Three Violations

A person commits a Level Three violation if he or she violates any of the following provisions:

- Rules or orders prohibiting the sale of saltwater fish.
- Rules or orders prohibiting the illegal importation or possession of exotic marine plants or animals.
- Section 379.407(2), F.S., establishing major violations.
- Section 379.407(4), F.S., prohibiting the possession of certain finfish in excess of recreational daily bag limits.
- Section 379.28, F.S., prohibiting the importation of freshwater fish.
- Section 379.354(17), F.S., prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
- Section 379.3014, F.S., prohibiting the illegal sale or possession of alligators.
- Section 379.404(1), (3), and (6), F.S., prohibiting the illegal taking and possession of deer and wild turkey.
- Section 379.406, F.S., prohibiting the possession and transportation of commercial quantities of freshwater game fish.²⁴

¹⁹ Section 379.401(2)(a), F.S.

²⁰ Section 379.401(2)(b)1., F.S.

²¹ Section 379.401(2)(b)2., F.S.

²² Section 379.401(2)(b)3., F.S.

²³ Section 379.401(2)(b)4., F.S.

²⁴ Section 379.401(3)(a), F.S.

The penalties for Level Three violations are as follows:

Level Three violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense	1 st Degree Misdemeanor ²⁵	Max. \$1000/ Max. one year	None
2 nd offense within ten years of previous Level Three violation (or higher)	1 st Degree Misdemeanor ²⁶	Min. \$750; Max. \$1000/ Max. one year	Suspension of license or permit for up to three years
Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.	1 st Degree Misdemeanor	Mandatory \$1000 ²⁷ / Max. one year	May not acquire license or permit for five years

Level Four Violations

A person commits a Level Four violation if he or she violates any of the following provisions:

- Section 379.365(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., prohibiting criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., prohibiting the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
- Section 379.354(16), F.S., prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.
- Section 379.404(5), F.S., prohibiting the sale of illegally-taken deer or wild turkey.
- Section 379.405, F.S., prohibiting the molestation or theft of freshwater fishing gear.
- Section 379.409, F.S., prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.²⁸

The penalties for Level Four violations are as follows:

Level Four violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense ²⁹	3 rd Degree Felony	Max. \$5000/ Max. five years	None

Section 379.401(4)(b), F.S., only references ss. 775.082 and 775.083, F.S., in relation to the punishment available for third degree felonies. Section 775.084, F.S., relating to enhanced penalties for habitual felony offenders or habitual violent felony offenders, is not included.

Section 379.401(5), F.S., provides an additional “catch-all” provision that makes violations of chapter 379, F.S., except as provided elsewhere, for a first offense, a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days or up to a \$500

²⁵ Section 379.401(3)(b)1., F.S.

²⁶ Section 379.401(3)(b)2., F.S.

²⁷ Section 379.401(3)(b)3., F.S.

²⁸ Section 379.401(4)(a), F.S.

²⁹ Section 379.401(4)(b), F.S.

fine. For second or subsequent violations, the person commits a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year or up to a \$1,000 fine.³⁰

Section 379.401(6), F.S., authorizes the court to order the suspension or forfeiture of any license or permit issued under chapter 379, F.S., to a person who is found guilty of committing a violation of the chapter.

In 2014, the FWC staff began to review all fish, wildlife, and recreational penalties to ensure that they were “fair, appropriate, meaningful, and consistent.”³¹ The FWC staff discovered, that while the revision in 2008 consolidated a majority of the penalties into the four-level structure, there are statutes relating to recreational activities which have penalties outside of the structure.³²

These penalty violations include:

- Section 379.2223, F.S., relating to the control and management of state game lands, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.2257, F.S., relating to cooperative agreements with the U.S. Forest Service.
- Section 379.29, F.S., relating to contaminating fresh waters, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.3511, F.S., relating to the appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits, is a second degree misdemeanor, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- Section 379.411, F.S., relating to the killing or wounding of any species designated as endangered, threatened, or of special concern, is a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.
- Section 379.4115, F.S., relating to the Florida or wild panther, is a third degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

In addition to statutes that have penalties outside of the four-level structure, there are statutes within chapter 379, F.S., which do not have specified penalties. Section 379.401(2)(a)11 and (5), F.S., both address penalties for prohibitions or violations that are not covered in chapter 379, F.S.

Section 379.401(2)(a)11., F.S., states:

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

11. All prohibitions in this chapter which are not otherwise classified.³³

Section 379.401(5), F.S., states:

(5) VIOLATIONS OF CHAPTER.—Except as provided in this chapter:

(a) A person who commits a violation of any provision of this chapter commits, for the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

³⁰ Section 379.401(5), F.S.

³¹ FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 7 (Oct. 23, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

³² *Id.*

³³ Section 379.401(2)(a)11., F.S.

(b) A person who is convicted of a second or subsequent violation of any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.³⁴

III. Effect of Proposed Changes:

PCS/SB 1282 revises various statutes within chapter 379, F.S., to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within the four-level penalty structure. The bill clarifies existing penalties and revises other penalties.

Revisions to Clarify Penalties Without Changing the Penalty

Level Two Violations

In chapter 379, F.S., there are multiple sections that do not have a specified penalty. Therefore, the penalty defaults to either a Level Two violation pursuant to s. 379.401(2)(a)11., F.S., or to a second or first degree misdemeanor pursuant to s. 379.401(5), F.S. The bill amends the following sections that do not have specified penalties to clarify that the violations of such sections are Level Two violations:

- Section 379.2425, F.S., relating to spearfishing.
- Section 379.295, F.S., prohibiting the use of explosives and other substances in fresh waters.
- Section 379.3502, F.S., prohibiting the loaning, transferring, or using a borrowed or transferred license or permit.
- Section 379.3503, F.S., prohibiting false statements in an application for a license or permit.
- Section 379.3504, F.S., prohibiting entering false information on licenses or permits.
- Section 379.363, F.S., relating to freshwater fish dealer's licenses.
- Section 379.364, F.S., relating to licenses required for fur and hide dealers.
- Section 379.3751, F.S., relating to required licenses for the taking and possession of alligators.
- Section 379.3752, F.S., relating to required tagging of alligators and hides.

Level Four Violations

In chapter 379, F.S., there are sections that have penalties for violations specified as third degree felonies. The bill amends the following sections to state that the penalties for the violation of the following statutes are Level Four violations, which are punishable as third degree felonies:

- Section 379.409, F.S., prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilian or their eggs.
- Section 379.411, F.S., prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 379.4115, F.S., prohibiting the killing of any Florida or wild panther.

³⁴ Section 379.401(5), F.S.

Section 379.354, F.S., relating to Recreational Licenses and Permits

In s. 379.354, F.S., there are only specified violations for subsections (16) and (17). Therefore, violations of the rest of the section should be Level Two violations by default pursuant to s. 379.401(2)(a)11 or second or first degree misdemeanors pursuant to s. 379.401(5). However, there is a cross-reference in s. 379.401, F.S., which lists violations of subsections (1) through (15) of s. 379.354, F.S., as Level One violations. The bill amends s. 379.354, F.S., to clarify that a person who violates such section, unless otherwise provided, commits a Level One violation under s. 379.401, F.S.

Section 379.365, F.S., relating to Stone Crab Regulations

Any person, other than a commercial harvester, who violates commission rules regulating stone crab trap certificates and trap tags under current law commits a Level Two violation. Because violations relating to the conservation of marine resources are provided in s. 379.407, F.S., the bill removes the Level Two violation. Therefore, any person, other than a commercial harvester, who violates commission rules regulating stone crab trap certificates and trap tags is subject to the following penalties:

- Upon a first conviction; imprisonment for a period of not more than 60 days, a fine of not less than \$100 nor more than \$500, or both the fine and imprisonment.
- On a second or subsequent conviction within 12 months; imprisonment for not more than six months, a fine of not less than \$250 nor more than \$1,000, or both the fine and imprisonment.³⁵

Increases or Decreases to Penalties

In chapter 379, F.S., there are sections that have penalties for violations specified as second degree misdemeanors. The penalties for second degree misdemeanors are equivalent to Level Two violations, except that the penalties for repeat offenders are increased for Level Two violations. The bill amends the following sections to change the penalties from second degree misdemeanors to Level Two violations:

- Section 379.29, F.S., prohibiting the contamination of fresh waters.
- Section 379.3511, F.S., relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.

Section 379.2223, F.S., provides that the penalty for violating rules necessary for the protection, control, operation, management, or development of lands or waters owned, leased, or otherwise assigned to the FWC for fish and wildlife management purposes is a second degree misdemeanor. The bill amends this section and provides that a person who violates or fails to comply with such rules is subject to penalties as provided in s. 379.401, F.S.

Section 379.2257, F.S., provides that the penalty for violations of rules on areas under a cooperative agreement with the United States Forest Service is a second degree misdemeanor. The bill amends this section to be consistent with the penalties on all other wildlife management areas and provides that a person who violates such rules is subject to penalties as provided in s. 379.401, F.S.

³⁵ Section 379.407(1), F.S.

The bill amends s. 379.357, F.S., to increase the penalty for the illegal sale of tarpon from a Level Two violation to a Level Three violation. This brings consistency with the penalties for violation of rules or orders prohibiting the sale of saltwater species. Additionally, the bill clarifies that the illegal taking, killing, or possessing of tarpon is a Level Two violation.

Section 379.401, F.S., relating to Penalties and Violations

The bill substantially amends s. 379.401, F.S. to consolidate the penalties for violations relating to recreational hunting, freshwater fishing, and saltwater fishing violations within with the four-level penalty structure.

Level One Violations

The bill adds the penalties for violating rules or orders relating to the filing of reports and other documents required by persons holding alligator licenses and permits to the list of Level One violations. Also added to the list of Level One violations are the penalties for violating rules or orders requiring the return of unused Convention on International Trade in Endangered Species (CITES) tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.

Under current law, the civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354, F.S., is \$50 plus the cost of the license or permit. If the person has previously committed the same Level One violation within the preceding 36 months, the civil penalty is \$100 plus the cost of the license or permit. The bill provides an alternative for people who violate the license and permit requirements of s. 379.354, F.S., except violations of subsection (6) relating to pier licenses, subsection (7) relating to vessel licenses, paragraph (8)(f) relating to special use permits for limited entry hunting and fishing activities, or paragraph (8)(h) relating to recreational user permits. A person would be able to purchase the license or permit rather than paying the cost of the license or permit as part of the civil penalty. The bill requires submission of the proof of purchase of the license or permit with the civil penalty. Additionally, the bill increases the civil penalty for any person who has previously committed the same Level One violation within the preceding 36 months from \$100 to \$250.

Level Two Violations

The bill adds the following references to the list of Level Two violations (these were Level Two violations by default or were revised to Level Two violations):

- Rules or orders requiring the maintenance of records relating to alligators.
- Return of unused CITES tags issued under alligator programs other than the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.
- Section 379.2425, F.S., relating to spearfishing.
- Section 379.29, F.S., prohibiting the contamination of fresh waters.
- Section 379.295, F.S., prohibiting the use of explosives and other substances in fresh waters.
- Section 379.3502, F.S., prohibiting loaning, transferring, or using a borrowed or transferred license or permit.
- Section 379.3503, F.S., prohibiting false statements in an application for a license or permit.
- Section 379.3504, F.S., prohibiting entering false information on licenses or permits.

- Section 379.3511, F.S., relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.
- Section 379.363, F.S., relating to freshwater fish dealer's licenses.
- Section 379.364, F.S., relating to licenses required for fur and hide dealers.
- Section 379.3751, F.S., relating to required licenses for the taking and possession of alligators.
- Section 379.3752, F.S., relating to required tagging of alligators and hides.

The bill removes ss. 379.33 and 379.407(7), F.S., from the list of Level Two violations. Section 379.33, F.S., was amended to remove the penalty provided in the section because it was an inaccurate statement. This section no longer contains a Level Two violation and, consequently, its cross-reference is removed from the list of penalties. Section 379.407(7), F.S., provides penalties for the unlicensed sale, purchase, or harvest relating to commercial saltwater fishing activities. As s. 379.401, F.S., provides penalties related to recreational activities, the bill removes the cross-reference to s. 379.407(7), F.S., from the section.

The bill amends the following references already on the Level Two list:

- Rules or orders of the commission prohibiting the unlawful use of finfish traps, to reference any traps, unless otherwise provided.
- Section 379.2421, F.S., for consistency.
- Section 379.357, F.S., to clarify that only a violation of subsection (3) of that section, prohibiting the take, kill, or possession of tarpon without purchasing a tarpon tag, is a Level Two violation.
- Section 379.365(2)(a), F.S., to remove the provision prohibiting the possession or use of stone crab traps without trap tags.
- Section 379.3671(2)(c), F.S., to remove the reference prohibiting the possession or use of spiny lobster traps without trap tags or certificates.
- All prohibitions in this chapter which are not otherwise classified, to include all requirements in this chapter which are not otherwise classified.

Level Three Violations

The bill clarifies that not all violations within s. 379.407(2), F.S., are Level Three violations and adds the penalty for violating s. 379.357(4), F.S., which prohibits the sale, transfer, or purchase of tarpon.

Level Four Violations

The bill amends the following references already on the Level Four list to clarify that there are other penalties within those provisions that are not Level Four violations:

- Section 379.365(2)(c), F.S., prohibiting criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., prohibiting criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., prohibiting the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.

The bill adds the following sections to the list of Level Four violations (these were third degree felonies):

- Section 379.411, F.S., prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 379.4115, F.S., prohibiting the killing of any Florida or wild panther.

The bill amends the penalty for a Level Four violation to include s. 775.084, F.S., relating to penalties for habitual felony offenders.

Illegal Activities While Committing Burglary or Trespass

The bill repeals s. 379.403, F.S., relating to the taking of game or fur-bearing animals while committing burglary or trespass, and moves the language to s. 379.401, F.S., with the following changes:

- Adds violations pertaining to orders which prohibit the killing, taking, possessing or selling of fish and wildlife.
- Increases the penalty from a \$250 fine to a \$500 fine.
- Expands the scope from game³⁶ or fur-bearing animals³⁷ to all fish and wildlife.

Violations of the Chapter

The bill removes s. 379.401(5), F.S., which provides an additional catch-all provision. However, s. 379.401(2)(a)13., F.S., retains the catchall that provides that all requirements or prohibitions in chapter 379, F.S., which are not otherwise classified are Level Two violations.

Additional Changes

The bill amends s. 379.2425, F.S., to clarify that spearfishing is authorized under certain circumstances by FWC rule or order.³⁸

The bill amends s. 379.2431, F.S., to prohibit knowingly possessing any marine turtle or the eggs or nests of marine turtles and to prohibit knowingly possessing, taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing any marine turtle hatchling, or parts thereof. The bill provides that a person, firm, or corporation that illegally possesses any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in s. 379.2431, F.S., commits a felony of the third degree, punishable by a term of imprisonment of up to five years or a maximum fine of \$5,000 or additional penalties for violent or habitual felony offenders. The bill clarifies that a person, firm, or corporation may not take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any hatchling, or parts thereof, of any marine turtle species unless authorized by FWC rule.

³⁶ The term “game” is defined by s. 379.101, F.S., to mean “deer, bear, squirrel, rabbits, and, where designated by commission rules, wild hogs, ducks, geese, rails, coots, gallinules, snipe, woodcock, wild turkeys, grouse, pheasants, quail, and doves.”

³⁷ The term “fur-bearing animals” is defined by s. 379.101, F.S., to mean “muskrat, mink, raccoon, otter, civet cat, skunk, red and gray fox, and opossum.”

³⁸ Rule 68B-20.003, F.A.C., authorizes spearfishing if provided in other marine fisheries rules.

The bill amends s. 379.33, F.S., to strike language relating to an inaccurate statement that states “except as provided under s. 379.401, F.S., any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.407(1).” This statement is inaccurate because violators of FWC rules may also be punished under s. 379.4015, F.S., or chapter 327, F.S., for example.³⁹

The bill amends s. 379.3502, F.S., to remove language prohibiting a person from altering or changing in any manner any license or permit issued pursuant to chapter 379, F.S. The section covers illegally loaning or transferring a permit and not altering or changing a permit. Section 379.354(16), F.S., makes forging or counterfeiting permits a Level Four violation.

The bill amends s. 379.357, F.S., to clarify that the purchase of a tarpon tag does not give the purchaser any right to harvest or possess tarpon in contravention of FWC rule.

Individuals purchasing a license or permit from the FWC may voluntarily authorize an additional payment of \$2 with their application fee to be provided to the Southeastern Guide Dogs, Inc.⁴⁰ The bill amends s. 379.359, F.S., to authorize, rather than require, the FWC to retain \$0.90 of the fee. This enables the FWC to send the full amount to Southeastern Guide Dogs Inc., minus administrative costs.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁹ FWC, Senate Bill 1282, *Agency Legislative Bill Analysis*, pg. 18 (Oct. 23, 2015)(on file with the Senate Committee on Environmental Preservation and Conservation).

⁴⁰ Section 379.359, F.S.

B. Private Sector Impact:

As the penalties for some violations are increased or decreased, PCS/SB 1282 may have an indeterminate fiscal impact on individuals who violate chapter 379, F.S.

Southeastern Guide Dogs, Inc. may receive an indeterminate positive fiscal impact if applicants for recreational hunting or fishing licenses choose to donate \$2 to the charity. Under the bill, the provision requiring FWC to retain \$0.90 is removed and, therefore, FWC may provide the charity with the full \$2, minus administrative costs.

C. Government Sector Impact:

The FWC estimates the net negative impact to the Clerks of the Circuit Court is \$85,456 annually. This represents all the changes to violations if the violators choose the alternative option provided under the bill and purchase a license or permit rather than paying the cost of such license or permit when cited for a violation.⁴¹

There is an estimated positive fiscal impact on the FWC if violators purchase the recreational licenses or permits. The proceeds from license or permit sales would go into different trust funds depending on the type of license or permit being acquired.⁴² The FWC has estimated the bill would increase funds collected by \$50,806 annually.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 379.2223, 379.2257, 379.2425, 379.2431, 379.29, 379.295, 379.33, 379.3502, 379.3503, 379.3504, 379.3511, 379.354, 379.357, 379.359, 379.363, 379.364, 379.365, 379.3751, 379.3752, 379.401, 379.409, 379.411, and 379.4115.

This bill repeals section 379.403 of the Florida Statutes.

⁴¹ FWC at 20.

⁴² *Id.* at 21.

⁴³ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on General Government on February 11, 2016:

The CS removes the definition of the term “fish and wildlife,” the cross-reference to the definition, and the sections that contained revisions to cross-references that were necessary as a result of adding the definition to s. 379.401, F.S.

The CS makes it a third degree felony to knowingly possess marine turtles or the eggs or nests of marine turtles. The CS clarifies the prohibition on knowingly taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing to include hatchlings or parts thereof.

- B. **Amendments:**

None.



436274

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Dean)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 91 - 101.

Delete lines 661 - 662

and insert:

taking, possessing, or selling fish and wildlife, in or out of
season, while violating chapter 810

Delete lines 740 - 814.

===== T I T L E A M E N D M E N T =====



436274

11 And the title is amended as follows:
12 Delete lines 3 - 4
13 and insert:
14 Commission; amending s. 379.2223, F.S.;
15 Delete lines 85 - 86
16 and insert:
17 providing an



833622

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Dean)
recommended the following:

Senate Amendment (with title amendment)

Between lines 147 and 148

insert:

Section 5. Paragraphs (d) and (e) of subsection (1) of
section 379.2431, Florida Statutes, are amended to read:

379.2431 Marine animals; regulation.—

(1) PROTECTION OF MARINE TURTLES.—

(d) Except as authorized in this paragraph, or unless
otherwise provided by the Federal Endangered Species Act or its



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11 implementing regulations, a person, firm, or corporation may
12 not:

13 ~~1. Knowingly possess the eggs of any marine turtle species~~
14 ~~described in this subsection.~~

15 ~~2. knowingly possess, take, disturb, mutilate, destroy,~~
16 ~~cause to be destroyed, transfer, sell, offer to sell, molest, or~~
17 ~~harass any marine turtle species or hatchling, or parts thereof,~~
18 ~~turtles or the eggs or nest of any marine turtle species turtles~~
19 ~~described in this subsection. The commission may:~~

20 ~~1.3. The commission may~~ Issue a special permit or loan
21 agreement to a any person, firm, or corporation, ~~to enable the~~
22 ~~holder~~ to possess a marine turtle species or hatchling, or parts
23 thereof, including nests ~~or~~ eggs, ~~or hatchlings~~, for
24 scientific, education, or exhibition purposes, or for
25 conservation activities such as the relocation of nests, eggs,
26 or marine turtles or hatchlings away from construction sites.
27 Notwithstanding other provisions of law, the commission may
28 issue such special permit or loan agreement to a any properly
29 accredited person as defined in paragraph (c) for the purposes
30 of marine turtle conservation.

31 ~~2.4. The commission shall have the authority to~~ Adopt rules
32 pursuant to chapter 120 to prescribe terms, conditions, and
33 restrictions for marine turtle conservation, and to permit the
34 possession of marine turtle species or hatchlings, ~~turtles~~ or
35 parts thereof, including nests or eggs.

36 (e)1. A Any person, firm, or corporation that commits any
37 act prohibited in paragraph (d) involving any egg of any marine
38 turtle species described in this subsection shall pay a penalty
39 of \$100 per egg in addition to other penalties provided in this



833622

40 paragraph.

41 2. A ~~Any~~ person, firm, or corporation that illegally
42 possesses 11 or fewer ~~of any~~ eggs of any marine turtle species
43 described in this subsection commits a first degree misdemeanor,
44 punishable as provided in ss. 775.082 and 775.083.

45 3. For a second or subsequent violation of subparagraph 2.,
46 a ~~any~~ person, firm, or corporation that illegally possesses 11
47 or fewer ~~of any~~ eggs of any marine turtle species described in
48 this subsection commits a third degree felony, punishable as
49 provided in s. 775.082, s. 775.083, or s. 775.084.

50 4. A ~~Any~~ person, firm, or corporation that illegally
51 possesses more than 11 ~~of any~~ eggs of any marine turtle species
52 described in this subsection commits a third degree felony,
53 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

54 5. A ~~Any~~ person, firm, or corporation that illegally takes,
55 disturbs, mutilates, destroys, causes to be destroyed,
56 transfers, sells, offers to sell, molests, or harasses any
57 marine turtle species or hatchling, or parts thereof, or the
58 eggs or nest of any marine turtle species ~~as~~ described in this
59 subsection, commits a third degree felony, punishable as
60 provided in s. 775.082, s. 775.083, or s. 775.084.

61 6. A person, firm, or corporation that illegally possesses
62 any marine turtle species or hatchling, or parts thereof, or the
63 nest of any marine turtle species described in this subsection,
64 commits a felony of the third degree, punishable as provided in
65 s. 775.082, s. 775.083, or s. 775.084.

66 ~~7.6.~~ Notwithstanding s. 777.04, a ~~any~~ person, firm, or
67 corporation that solicits or conspires with another person,
68 firm, or corporation, to commit an act prohibited by this



833622

69 subsection commits a felony of the third degree, punishable as
70 provided in s. 775.082, s. 775.083, or s. 775.084.

71 ~~8.7.~~ The proceeds from the penalties assessed pursuant to
72 this paragraph shall be deposited into the Marine Resources
73 Conservation Trust Fund.

74

75 ===== T I T L E A M E N D M E N T =====

76 And the title is amended as follows:

77 Between lines 12 and 13

78 insert:

79 amending s. 379.2431, F.S.; prohibiting certain
80 possession of any marine turtle species or hatchling
81 or parts thereof; providing penalties;

By Senator Dean

5-00724A-16

20161282__

A bill to be entitled

1 An act relating to the Fish and Wildlife Conservation
 2 Commission; amending s. 379.101, F.S.; defining the
 3 term "fish and wildlife"; amending s. 379.2223, F.S.;
 4 revising penalties for violations of commission rules
 5 relating to control and management of state game
 6 lands; amending s. 379.2257, F.S.; revising penalties
 7 for violations of commission rules relating to
 8 cooperative agreements with the United States Forest
 9 Service; amending s. 379.2425, F.S.; authorizing
 10 exceptions to the prohibition on spearfishing;
 11 specifying penalties for violating the prohibition;
 12 amending s. 379.29, F.S.; revising penalties related
 13 to the contamination of fresh waters; amending s.
 14 379.295, F.S.; specifying penalties associated with
 15 the prohibition on the use of explosives and other
 16 substances injurious to fish; amending s. 379.33,
 17 F.S.; deleting penalty provisions associated with the
 18 general enforcement of commission rules; amending s.
 19 379.3502, F.S.; deleting a provision regarding the
 20 alteration of licenses or permits; specifying
 21 penalties for the unlawful transfer of a license or
 22 permit; amending s. 379.3503, F.S.; specifying
 23 penalties for swearing or affirming a false statement
 24 in an application for a license or permit; amending s.
 25 379.3504, F.S.; specifying penalties for entering
 26 false information on an application for a license or
 27 permit; amending s. 379.3511, F.S.; revising penalties
 28 for violations related to subagent sales of hunting,
 29 fishing, and trapping licenses and permits; amending
 30 s. 379.354, F.S.; specifying penalties for violations
 31 related to recreational licenses, permits, and
 32

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

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20161282__

33 authorization numbers; amending s. 379.357, F.S.;
 34 providing that the purchase of a tarpon tag does not
 35 accord the purchaser with certain rights; revising
 36 penalties related to the tarpon license program;
 37 amending s. 379.359, F.S.; authorizing, rather than
 38 requiring, the commission to retain a portion of
 39 voluntary contributions for Southeastern Guide Dogs,
 40 Inc.; amending s. 379.363, F.S.; specifying penalties
 41 for violations related to freshwater fish dealer
 42 licenses; amending s. 379.364, F.S.; specifying
 43 penalties for violations related to the licensure of
 44 fur and hide dealers; amending s. 379.365, F.S.;
 45 revising penalties for violations related to stone
 46 crabs; amending s. 379.3751, F.S.; specifying
 47 penalties for violations related to the taking and
 48 possession of alligators; amending s. 379.3752, F.S.;
 49 specifying penalties for violations of requirements
 50 related to tagging of alligators and alligator hides;
 51 amending s. 379.401, F.S.; revising the penalties
 52 associated with the violation of commission rules
 53 related to the filing of documentation; specifying
 54 penalties for the violation of commission rules or
 55 orders related to the return of unused Convention on
 56 the International Trade on Endangered Species (CITES)
 57 tags; authorizing imposition of a modified penalty for
 58 a specified offense if certain conditions are met;
 59 specifying that persons who commit certain Level One
 60 violations may be required to provide proof of a
 61 license or permit to satisfy a citation; providing

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62 that violations of commission rules or orders
 63 regarding all traps are Level Two violations unless
 64 otherwise specified; providing that violations of
 65 rules or orders of the commission relating certain
 66 alligator-related programs are Level Two violations;
 67 providing that certain specified unclassified
 68 violations are Level Two violations; revising the
 69 levels to which specified violations are assigned;
 70 revising penalty provisions for Level Four violations;
 71 specifying penalties for certain violations while
 72 engaged in trespass; specifying that certain fines
 73 collected for trespass violations be deposited in the
 74 State Game Trust Fund; repealing s. 379.403, F.S.,
 75 relating to the illegal killing, taking, possessing,
 76 or selling of wildlife or game and related fines;
 77 amending s. 379.409, F.S.; revising penalties for the
 78 illegal killing, possessing, or capturing of
 79 alligators or other crocodilia or crocodilian eggs;
 80 amending s. 379.411, F.S.; revising penalties for the
 81 unlawful intentional killing or wounding of any
 82 species designated as endangered, threatened, or of
 83 special concern; amending s. 379.4115, F.S.; revising
 84 penalties for the killing of Florida or wild panthers;
 85 amending ss. 379.3004, 379.337, 589.19, and 810.09,
 86 F.S.; conforming cross-references; providing an
 87 effective date.

89 Be It Enacted by the Legislature of the State of Florida:
 90

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91 Section 1. Present subsections (14) through (39) of section
 92 379.101, Florida Statutes, are redesignated as subsections (15)
 93 through (40), respectively, and a new subsection (14) is added
 94 to that section, to read:

95 379.101 Definitions.—In construing these statutes, where
 96 the context does not clearly indicate otherwise, the word,
 97 phrase, or term:

98 (14) "Fish and wildlife" means any member of the animal
 99 kingdom, including, but not limited to, any mammal, fish, bird,
 100 amphibian, reptile, mollusk, crustacean, arthropod, or other
 101 invertebrate.

102 Section 2. Subsection (2) of section 379.2223, Florida
 103 Statutes, is amended to read:

104 379.2223 Control and management of state game lands.—

105 (2) Any person violating or otherwise failing to comply
 106 with any rule or regulation so adopted is subject to penalties
 107 as provided in s. 379.401 ~~commits a misdemeanor of the second~~
 108 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

109 Section 3. Subsection (3) of section 379.2257, Florida
 110 Statutes, is amended to read:

111 379.2257 Cooperative agreements with United States U.S.
 112 Forest Service; penalty.—The Fish and Wildlife Conservation
 113 Commission is authorized and empowered:

114 (3) In addition to the requirements of chapter 120, notice
 115 of the making, adoption, and promulgation of the above rules and
 116 regulations shall be given by posting said notices, or copies of
 117 the rules and regulations, in the offices of the county judges
 118 and in the post offices within the area to be affected and
 119 within 10 miles thereof. In addition to the posting of said

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120 notices, as aforesaid, copies of said notices or of said rules
 121 and regulations shall also be published in newspapers published
 122 at the county seats of Baker, Columbia, Marion, Lake, Putnam,
 123 and Liberty Counties, or so many thereof as have newspapers,
 124 once not more than 35 nor less than 28 days and once not more
 125 than 21 nor less than 14 days prior to the opening of the state
 126 hunting season in said areas. Any person violating any rules or
 127 regulations promulgated by the commission to cover these areas
 128 under cooperative agreements between the Fish and Wildlife
 129 Conservation Commission and the United States Forest Service is
 130 subject to penalties as provided in s. 379.401, none of which
 131 shall be in conflict with the laws of Florida, shall be guilty
 132 of a misdemeanor of the second degree, punishable as provided in
 133 s. 775.082 or s. 775.083.

134 Section 4. Paragraph (a) of subsection (2) of section
 135 379.2425, Florida Statutes, is amended, and subsection (4) is
 136 added to that section, to read:

137 379.2425 Spearfishing; definition; limitations; penalty.—

138 (2) (a) Except as otherwise provided by commission rule or
 139 order, spearfishing is prohibited within the boundaries of the
 140 John Pennekamp Coral Reef State Park, the waters of Collier
 141 County, and the area in Monroe County known as Upper Keys, which
 142 includes all salt waters under the jurisdiction of the Fish and
 143 Wildlife Conservation Commission beginning at the county line
 144 between Miami-Dade and Monroe Counties and running south,
 145 including all of the keys down to and including Long Key.

146 (4) A person who violates this section commits a Level Two
 147 violation under s. 379.401.

148 Section 5. Subsection (2) of section 379.29, Florida

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149 Statutes, is amended to read:

150 379.29 Contaminating fresh waters.—

151 (2) A Any person, firm, or corporation violating ~~any of the~~
 152 ~~provisions of this section commits a Level Two violation under~~
 153 ~~s. 379.401 shall be guilty of a misdemeanor of the second~~
 154 ~~degree, punishable as provided in s. 775.082 or s. 775.083 for~~
 155 ~~the first offense, and for the second or subsequent offense~~
 156 ~~shall be guilty of a misdemeanor of the first degree, punishable~~
 157 ~~as provided in s. 775.082 or s. 775.083.~~

158 Section 6. Section 379.295, Florida Statutes, is amended to
 159 read:

160 379.295 Use of explosives and other substances prohibited.—

161 No person may throw or place, or cause to be thrown or placed,
 162 any dynamite, lyddite, gunpowder, cannon cracker, acids,
 163 filtration discharge, debris from mines, Indian berries,
 164 sawdust, green walnuts, walnut leaves, creosote, oil, or other
 165 explosives or deleterious substance or force into the fresh
 166 waters of this state whereby fish therein are or may be injured.
 167 Nothing in this section may be construed as preventing the
 168 release of water slightly discolored by mining operations or
 169 water escaping from such operations as the result of
 170 providential causes. A person who violates this section commits
 171 a Level Two violation under s. 379.401.

172 Section 7. Section 379.33, Florida Statutes, is amended to
 173 read:

174 379.33 Enforcement of commission rules; ~~penalties for~~
 175 ~~violation of rule.~~—Rules of the Fish and Wildlife Conservation
 176 Commission shall be enforced by any law enforcement officer
 177 certified pursuant to s. 943.13. ~~Except as provided under s.~~

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178 ~~379.401, any person who violates or otherwise fails to comply~~
 179 ~~with any rule adopted by the commission shall be punished~~
 180 ~~pursuant to s. 379.407(1).~~

181 Section 8. Section 379.3502, Florida Statutes, is amended
 182 to read:

183 379.3502 License and permit not transferable.—A person may
 184 not ~~alter or change in any manner, or~~ loan or transfer to
 185 another, unless otherwise provided, any license or permit issued
 186 pursuant to ~~the provisions of this chapter, and such license or~~
 187 ~~permit may be used only by nor may any other person, other than~~
 188 ~~the person to whom it is issued. A person who violates this~~
 189 ~~section commits a Level Two violation under s. 379.401, use the~~
 190 ~~same.~~

191 Section 9. Section 379.3503, Florida Statutes, is amended
 192 to read:

193 379.3503 False statement in application for license or
 194 permit.—~~A Any~~ person who swears or affirms to any false
 195 statement in any application for license or permit provided by
 196 this chapter commits a Level Two violation under s. 379.401, is
 197 ~~guilty of violating this chapter, and shall be subject to the~~
 198 ~~penalty provided in s. 379.401,~~ and any false statement
 199 contained in any application for such license or permit renders
 200 the license or permit void.

201 Section 10. Section 379.3504, Florida Statutes, is amended
 202 to read:

203 379.3504 Entering false information on licenses or
 204 permits.—Whoever knowingly and willfully enters false
 205 information on, or allows or causes false information to be
 206 entered on or shown upon, any license or permit issued under the

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207 ~~provisions of this chapter in order to avoid prosecution, or to~~
 208 ~~assist another in avoiding to avoid~~ prosecution, or for any
 209 other wrongful purpose commits a Level Two violation under s.
 210 ~~379.401 shall be punished as provided in s. 379.401.~~

211 Section 11. Paragraphs (d), (e), and (f) of subsection (1)
 212 of section 379.3511, Florida Statutes, are amended, and a new
 213 subsection (4) is added to that section, to read:

214 379.3511 Appointment of subagents for the sale of hunting,
 215 fishing, and trapping licenses and permits.—

216 (1) Subagents shall serve at the pleasure of the
 217 commission. The commission may establish, by rule, procedures
 218 for the selection and appointment of subagents. The following
 219 are requirements for subagents so appointed:

220 ~~(d) Any person who willfully violates any of the provisions~~
 221 ~~of this section commits a misdemeanor of the second degree,~~
 222 ~~punishable as provided in s. 775.082 or s. 775.083.~~

223 (d)(e) A subagent may charge and receive as his or her
 224 compensation 50 cents for each license or permit sold. This
 225 charge is in addition to the sum required by law to be collected
 226 for the sale and issuance of each license or permit. This charge
 227 does not apply to the shoreline fishing license; however, for
 228 each shoreline fishing license issued, the subagent may retain
 229 50 cents from other license proceeds otherwise due the
 230 commission.

231 (e)(f) A subagent shall submit payment for and report the
 232 sale of licenses and permits to the commission as prescribed by
 233 the commission.

234 (4) A person who willfully violates this section commits a
 235 Level Two violation under s. 379.401.

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236 Section 12. Subsection (18) is added to section 379.354,
 237 Florida Statutes, to read:
 238 379.354 Recreational licenses, permits, and authorization
 239 numbers; fees established.-
 240 (18) PENALTY.—Unless otherwise provided, a person who
 241 violates this section commits a Level One violation under s.
 242 379.401.

243 Section 13. Subsections (3) through (7) of section 379.357,
 244 Florida Statutes, are amended to read:
 245 379.357 Fish and Wildlife Conservation Commission license
 246 program for tarpon; fees; penalties.-
 247 (3) An individual may not take, kill, or possess any fish
 248 of the species *Megalops atlanticus*, commonly known as tarpon,
 249 unless the individual has purchased a tarpon tag and securely
 250 attached it through the lower jaw of the fish.

251 ~~(4) Any individual including a taxidermist who possesses a~~
 252 ~~tarpon which does not have a tag securely attached as required~~
 253 ~~by this section commits a Level Two violation under s. 379.401.~~
 254 ~~Provided, however, A taxidermist may remove the tag during the~~
 255 ~~process of mounting a tarpon, but the tag must. The removed tag~~
 256 ~~shall remain with the fish during any subsequent storage or~~
 257 ~~shipment. Purchase of a tarpon tag does not give the purchaser~~
 258 ~~any right to harvest or possess tarpon in contravention of~~
 259 ~~commission rule. A person who violates this subsection commits a~~
 260 ~~Level Two violation under s. 379.401.~~

261 ~~(4)(5) An Purchase of a tarpon tag shall not accord the~~
 262 ~~purchaser any right to harvest or possess tarpon in~~
 263 ~~contravention of rules adopted by the commission. No individual~~
 264 may not sell, offer for sale, barter, exchange for merchandise,

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265 transport for sale, either within or without the state, offer to
 266 purchase, or purchase any species of fish known as tarpon. A
 267 person who violates this subsection commits a Level Three
 268 violation under s. 379.401.

269 ~~(5)(6) The commission shall prescribe and provide suitable~~
 270 ~~forms and tags necessary to administer~~ ~~carry out the provisions~~
 271 ~~of this section.~~

272 ~~(6)(7) The provisions of This section does shall not apply~~
 273 ~~to a person anyone who immediately returns a tarpon, uninjured,~~
 274 ~~to the water at the place where the fish was caught.~~

275 Section 14. Section 379.359, Florida Statutes, is amended
 276 to read:
 277 379.359 License application provision for voluntary
 278 contribution to Southeastern Guide Dogs, Inc.—The application
 279 for any license for recreational activities issued under this
 280 part must include a check-off provision that permits the
 281 applicant for licensure to make a voluntary contribution of \$2.
 282 The Fish and Wildlife Conservation Commission may shall retain
 283 up to 90 cents from each contribution to cover administrative
 284 costs. The remainder shall be distributed quarterly by the Fish
 285 and Wildlife Conservation Commission to Southeastern Guide Dogs,
 286 Inc., located in Palmetto. Southeastern Guide Dogs, Inc., shall
 287 use the contributions to breed, raise, and train guide dogs for
 288 the blind, specifically for the “Paws for Patriots” program,
 289 including in-residence training for veterans who are provided
 290 guide dogs by Southeastern Guide Dogs, Inc.

291 Section 15. Subsection (4) is added to section 379.363,
 292 Florida Statutes, to read:
 293 379.363 Freshwater fish dealer’s license.-

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294 (4) A person who violates this section commits a Level Two
 295 violation under s. 379.401.

296 Section 16. Subsection (5) is added to section 379.364,
 297 Florida Statutes, to read:

298 379.364 License required for fur and hide dealers.—

299 (5) A person who violates this section commits a Level Two
 300 violation under s. 379.401.

301 Section 17. Paragraph (a) of subsection (2) of section
 302 379.365, Florida Statutes, is amended to read:

303 379.365 Stone crab; regulation.—

304 (2) PENALTIES.—For purposes of this subsection, conviction
 305 is any disposition other than acquittal or dismissal, regardless
 306 of whether the violation was adjudicated under any state or
 307 federal law.

308 (a) It is unlawful to violate commission rules regulating
 309 stone crab trap certificates and trap tags. A No person may not
 310 use an expired tag or a stone crab trap tag not issued by the
 311 commission or possess or use a stone crab trap in or on state
 312 waters or adjacent federal waters without having a trap tag
 313 required by the commission firmly attached to the trap thereto.

314 ~~±. In addition to any other penalties provided in s.~~
 315 ~~379.407, the following administrative penalties apply to a for~~
 316 ~~any commercial harvester who violates this paragraph; the~~
 317 ~~following administrative penalties apply.~~

318 1.a. For a first violation, the commission shall assess an
 319 administrative penalty of up to \$1,000.

320 2.b. For a second violation that occurs within 24 months of
 321 any previous such violation, the commission shall assess an
 322 administrative penalty of up to \$2,000 and the stone crab

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323 endorsement under which the violation was committed may be
 324 suspended for 12 calendar months.

325 ~~3.e.~~ For a third violation that occurs within 36 months of
 326 any previous two such violations, the commission shall assess an
 327 administrative penalty of up to \$5,000 and the stone crab
 328 endorsement under which the violation was committed may be
 329 suspended for 24 calendar months.

330 ~~4.d.~~ A fourth violation that occurs within 48 months of any
 331 three previous such violations, shall result in permanent
 332 revocation of all of the violator's saltwater fishing
 333 privileges, including having the commission proceed against the
 334 endorsement holder's saltwater products license in accordance
 335 with s. 379.407.

336 ~~2. Any other person who violates the provisions of this~~
 337 ~~paragraph commits a Level Two violation under s. 379.401.~~

338
 339 Any commercial harvester assessed an administrative penalty
 340 under this paragraph shall, within 30 calendar days after
 341 notification, pay the administrative penalty to the commission,
 342 or request an administrative hearing under ss. 120.569 and
 343 120.57. The proceeds of all administrative penalties collected
 344 under this paragraph shall be deposited in the Marine Resources
 345 Conservation Trust Fund.

346 Section 18. Subsection (5) is added to section 379.3751,
 347 Florida Statutes, to read:

348 379.3751 Taking and possession of alligators; trapping
 349 licenses; fees.—

350 (5) A person who violates this section commits a Level Two
 351 violation under s. 379.401.

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352 Section 19. Subsection (3) is added to section 379.3752,
353 Florida Statutes, to read:

354 379.3752 Required tagging of alligators and hides; fees;
355 revenues.—The tags provided in this section shall be required in
356 addition to any license required under s. 379.3751.

357 (3) A person who violates this section commits a Level Two
358 violation under s. 379.401.

359 Section 20. Section 379.401, Florida Statutes, is amended
360 to read:

361 379.401 Penalties and violations; civil penalties for
362 noncriminal infractions; criminal penalties; suspension and
363 forfeiture of licenses and permits.—

364 (1) (a) LEVEL ONE VIOLATIONS.—A person commits a Level One
365 violation if he or she violates any of the following provisions:

366 1. Rules or orders of the commission relating to the filing
367 of reports or other documents required to be filed by persons
368 who hold any recreational licenses and permits or any alligator
369 licenses and permits issued by the commission.

370 2. Rules or orders of the commission relating to quota hunt
371 permits, daily use permits, hunting zone assignments, camping,
372 alcoholic beverages, vehicles, and check stations within
373 wildlife management areas or other areas managed by the
374 commission.

375 3. Rules or orders of the commission relating to daily use
376 permits, alcoholic beverages, swimming, possession of firearms,
377 operation of vehicles, and watercraft speed within fish
378 management areas managed by the commission.

379 4. Rules or orders of the commission relating to vessel
380 size or specifying motor restrictions on specified water bodies.

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381 5. Rules or orders of the commission requiring the return
382 of unused Convention on the International Trade on Endangered
383 Species (CITES) tags issued under the Statewide Alligator
384 Harvest Program or the Statewide Nuisance Alligator Program.

385 ~~7.5-~~ Section 379.354(1)-(15), providing for recreational
386 licenses to hunt, fish, and trap.

387 ~~8.6-~~ Section 379.3581, providing hunter safety course
388 requirements.

389 ~~6.7-~~ Section 379.3003, prohibiting deer hunting unless
390 required clothing is worn.

391 (b) A person who commits a Level One violation commits a
392 noncriminal infraction and shall be cited to appear before the
393 county court.

394 (c)1. The civil penalty for committing a Level One
395 violation involving the license and permit requirements of s.
396 379.354 is \$50 plus the cost of the license or permit, unless
397 subparagraph 2. applies. Alternatively, a person who violates
398 the license and permit requirements of s. 379.354 and who is
399 subject to the penalties imposed by this subparagraph, except a
400 person who violates s. 379.354(6), (7), (8)(f), or (8)(h), may
401 purchase the license or permit and shall provide proof of such
402 license or permit and pay a civil penalty of \$50.

403 2. The civil penalty for committing a Level One violation
404 involving the license and permit requirements of s. 379.354 is
405 ~~\$250~~ ~~\$100~~ plus the cost of the license or permit if the person
406 cited has previously committed the same Level One violation
407 within the preceding 36 months. Alternatively, a person who
408 violates the license and permit requirements of s. 379.354 and
409 who is subject to the penalties imposed by this subparagraph,

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410 except a person who violates s. 379.354(6), (7), (8) (f), or
 411 (8) (h), may purchase the license or permit and shall provide
 412 proof of such license or permit and pay a civil penalty of \$250.

413 (d)1. The civil penalty for any other Level One violation
 414 is \$50 unless subparagraph 2. applies.

415 2. The civil penalty for any other Level One violation is
 416 \$250 ~~\$100~~ if the person cited has previously committed the same
 417 Level One violation within the preceding 36 months.

418 (e) A person cited for a Level One violation shall sign and
 419 accept a citation to appear before the county court. The issuing
 420 officer may indicate on the citation the time and location of
 421 the scheduled hearing and shall indicate the applicable civil
 422 penalty.

423 (f) A person cited for a Level One violation may pay the
 424 civil penalty, and, if applicable, provide proof of the license
 425 or permit required under s. 379.354, by mail or in person,
 426 within 30 days after receipt of the citation. If the civil
 427 penalty is paid, the person is ~~shall be~~ deemed to have admitted
 428 committing the Level One violation and to have waived his or her
 429 right to a hearing before the county court. Such admission may
 430 not be used as evidence in any other proceedings except to
 431 determine the appropriate fine for any subsequent violation
 432 violations.

433 (g) A person who refuses to accept a citation, ~~who fails~~ to
 434 pay the civil penalty for a Level One violation, or ~~who fails~~ to
 435 appear before a county court as required commits a misdemeanor
 436 of the second degree, punishable as provided in s. 775.082 or s.
 437 775.083.

438 (h) A person who elects to, or is required to, appear

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439 before the county court is ~~or who is required to appear before~~
 440 ~~the county court shall be~~ deemed to have waived the limitations
 441 on civil penalties provided under paragraphs (c) and (d). After
 442 a hearing, the county court shall determine if a Level One
 443 violation has been committed, and, if so, may impose a civil
 444 penalty of not less than \$50 for a first-time violation, and not
 445 more than \$500 for subsequent violations. A person found guilty
 446 of committing a Level One violation may appeal that finding to
 447 the circuit court. The commission of a violation must be proved
 448 beyond a reasonable doubt.

449 (i) A person cited for violating the requirements of s.
 450 379.354 relating to personal possession of a license or permit
 451 may not be convicted if, prior to or at the time of a county
 452 court hearing, he or she ~~the person~~ produces the required
 453 license or permit for verification by the hearing officer or the
 454 court clerk. The license or permit must have been valid at the
 455 time the person was cited. The clerk or hearing officer may
 456 assess a \$10 fee for costs under this paragraph.

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

459 1. Rules or orders of the commission relating to seasons or
 460 time periods for the taking of wildlife, freshwater fish, or
 461 saltwater fish.

462 2. Rules or orders of the commission establishing bag,
 463 possession, or size limits or restricting methods of taking
 464 wildlife, freshwater fish, or saltwater fish.

465 3. Rules or orders of the commission prohibiting access or
 466 otherwise relating to access to wildlife management areas or
 467 other areas managed by the commission.

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468 4. Rules or orders of the commission relating to the
 469 feeding of saltwater fish.

470 5. Rules or orders of the commission relating to landing
 471 requirements for freshwater fish or saltwater fish.

472 6. Rules or orders of the commission relating to restricted
 473 hunting areas, critical wildlife areas, or bird sanctuaries.

474 7. Rules or orders of the commission relating to tagging
 475 requirements for wildlife and fur-bearing animals.

476 8. Rules or orders of the commission relating to the use of
 477 dogs for the taking of wildlife.

478 9. Rules or orders of the commission which are not
 479 otherwise classified.

480 10. Rules or orders of the commission prohibiting the
 481 unlawful use of ~~finfish~~ traps, unless otherwise provided by law.

482 11. Rules or orders of the commission which require the
 483 maintenance of records relating to alligators.

484 12. Rules or orders of the commission requiring the return
 485 of unused CITES tags issued under an alligator management
 486 program other than the Statewide Alligator Harvest Program or
 487 Statewide Nuisance Alligator Program.

488 ~~13.11. All requirements or prohibitions in this chapter~~
 489 ~~which are not otherwise classified.~~

490 ~~12. Section 379.33, prohibiting the violation of or~~
 491 ~~noncompliance with commission rules.~~

492 ~~13. Section 379.407(7), prohibiting the sale, purchase,~~
 493 ~~harvest, or attempted harvest of any saltwater product with~~
 494 ~~intent to sell.~~

495 15.14. Section 379.2421, relating to fishers and equipment,
 496 unless otherwise provided in that section ~~prohibiting the~~

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497 ~~obstruction of waterways with net gear.~~

498 ~~31.15. Section 379.413, prohibiting the unlawful taking of~~
 499 ~~bonefish.~~

500 16. Section 379.2425, relating to spearfishing.

501 17. Section 379.29, prohibiting the contamination of fresh
 502 waters.

503 18. Section 379.295, prohibiting the use of explosives and
 504 other substances in fresh waters.

505 19. Section 379.3502, prohibiting loaning, transferring, or
 506 using a borrowed or transferred license or permit.

507 20. Section 379.3503, prohibiting false statements in an
 508 application for a license or permit.

509 21. Section 379.3504, prohibiting entering false
 510 information on licenses or permits.

511 22. Section 379.3511, relating to the sale of hunting,
 512 fishing, and trapping licenses and permits by subagents.

513 23. Section 379.357(3), prohibiting the take, kill, or
 514 possession of tarpon without purchasing a tarpon tag.

515 24. Section 379.363, relating to freshwater fish dealer's
 516 licenses.

517 25. Section 379.364, relating to licenses required for fur
 518 and hide dealers.

519 ~~26.16. Section 379.365(2)(b) Section 379.365(2)(a) and (b),~~
 520 ~~prohibiting the possession or use of stone crab traps without~~
 521 ~~trap tags and theft of stone crab trap contents or gear, unless~~
 522 ~~otherwise provided in law.~~

523 27.17. Section 379.366(4)(b), prohibiting the theft of blue
 524 crab trap contents or trap gear, unless otherwise provided in
 525 that section.

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526 ~~28.19.~~ Section 379.3671(2)(c), excluding subparagraph 5.,
 527 prohibiting the possession or use of spiny lobster traps without
 528 trap tags or certificates and theft of spiny lobster trap
 529 contents or trap gear, unless otherwise provided in that
 530 section.

531 ~~19.~~ Section 379.357, prohibiting the possession of tarpon
 532 without purchasing a tarpon tag.

533 ~~14.20.~~ Section 379.105, prohibiting the intentional
 534 harassment of hunters, fishers, or trappers.

535 29. Section 379.3751, relating to required licenses for the
 536 taking and possession of alligators.

537 30. Section 379.3752, relating to required tagging of
 538 alligators and hides.

539 (b)1. A person who commits a Level Two violation but who
 540 has not been convicted of a Level Two or higher violation within
 541 the past 3 years commits a misdemeanor of the second degree,
 542 punishable as provided in s. 775.082 or s. 775.083.

543 2. Unless the stricter penalties in subparagraph 3. or
 544 subparagraph 4. apply, a person who commits a Level Two
 545 violation within 3 years after a previous conviction for a Level
 546 Two or higher violation commits a misdemeanor of the first
 547 degree, punishable as provided in s. 775.082 or s. 775.083, with
 548 a minimum mandatory fine of \$250.

549 3. Unless the stricter penalties in subparagraph 4. apply,
 550 a person who commits a Level Two violation within 5 years after
 551 two previous convictions for a Level Two or higher violation,
 552 commits a misdemeanor of the first degree, punishable as
 553 provided in s. 775.082 or s. 775.083, with a minimum mandatory
 554 fine of \$500 and a suspension of any recreational license or

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555 permit issued under s. 379.354 for 1 year. Such suspension shall
 556 include the suspension of the privilege to obtain such license
 557 or permit and the suspension of the ability to exercise any
 558 privilege granted under any exemption in s. 379.353.

559 4. A person who commits a Level Two violation within 10
 560 years after three previous convictions for a Level Two or higher
 561 violation commits a misdemeanor of the first degree, punishable
 562 as provided in s. 775.082 or s. 775.083, with a minimum
 563 mandatory fine of \$750 and a suspension of any recreational
 564 license or permit issued under s. 379.354 for 3 years. Such
 565 suspension shall include the suspension of the privilege to
 566 obtain such license or permit and the suspension of the ability
 567 to exercise any privilege granted under s. 379.353. If the
 568 recreational license or permit being suspended was an annual
 569 license or permit, any privileges under ss. 379.353 and 379.354
 570 may not be acquired for a 3-year period following the date of
 571 the violation.

572 (3) (a) LEVEL THREE VIOLATIONS.—A person commits a Level
 573 Three violation if he or she violates any of the following
 574 provisions:

575 1. Rules or orders of the commission prohibiting the sale
 576 of saltwater fish.

577 2. Rules or orders of the commission prohibiting the
 578 illegal importation or possession of exotic marine plants or
 579 animals.

580 ~~9.3.~~ Section 379.407(2), establishing major violations,
 581 unless otherwise provided in that section.

582 ~~10.4.~~ Section 379.407(4), prohibiting the possession of
 583 certain finfish in excess of recreational daily bag limits,

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584 unless otherwise provided in that section.

585 ~~3.5-~~ Section 379.28, prohibiting the importation of

586 freshwater fish.

587 ~~5.6-~~ Section 379.354(17), prohibiting the taking of game,

588 freshwater fish, or saltwater fish while a required license is

589 suspended or revoked.

590 ~~4.7-~~ Section 379.3014, prohibiting the illegal sale or

591 possession of alligators.

592 6. Section 379.357(4), prohibiting the sale, transfer, or

593 purchase of tarpon.

594 ~~7.8-~~ Section 379.404(1), (3), and (6), prohibiting the

595 illegal taking and possession of deer and wild turkey.

596 ~~8.9-~~ Section 379.406, prohibiting the possession and

597 transportation of commercial quantities of freshwater game fish.

598 (b)1. A person who commits a Level Three violation but who

599 has not been convicted of a Level Three or higher violation

600 within the past 10 years commits a misdemeanor of the first

601 degree, punishable as provided in s. 775.082 or s. 775.083.

602 2. A person who commits a Level Three violation within 10

603 years after a previous conviction for a Level Three or higher

604 violation commits a misdemeanor of the first degree, punishable

605 as provided in s. 775.082 or s. 775.083, with a minimum

606 mandatory fine of \$750 and a suspension of any recreational

607 license or permit issued under s. 379.354 for the remainder of

608 the period for which the license or permit was issued up to 3

609 years. Such suspension shall include the suspension of the

610 privilege to obtain such license or permit and the ability to

611 exercise any privilege granted under s. 379.353. If the

612 recreational license or permit being suspended was an annual

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613 license or permit, any privileges under ss. 379.353 and 379.354

614 may not be acquired for a 3-year period following the date of

615 the violation.

616 3. A person who commits a violation of s. 379.354(17) shall

617 receive a mandatory fine of \$1,000. Any privileges under ss.

618 379.353 and 379.354 may not be acquired for a 5-year period

619 following the date of the violation.

620 (4) (a) LEVEL FOUR VIOLATIONS.—A person commits a Level Four

621 violation if he or she violates any of the following provisions:

622 1. Section 379.354(16), prohibiting the making, forging,

623 counterfeiting, or reproduction of a recreational license, or

624 possession of a recreational license without authorization from

625 the commission.

626 2. Section 379.365(2) (c), prohibiting criminal activities

627 relating to the taking of stone crabs, unless otherwise provided

628 in that section.

629 ~~3.2-~~ Section 379.366(4) (c), prohibiting criminal activities

630 relating to the taking and harvesting of blue crabs, unless

631 otherwise provided in that section.

632 ~~4.3-~~ Section 379.367(4), prohibiting the willful

633 molestation of spiny lobster gear, unless otherwise specified in

634 that section.

635 ~~5.4-~~ Section 379.3671(2) (c)5., prohibiting the unlawful

636 reproduction, possession, sale, trade, or barter of spiny

637 lobster trap tags or certificates, unless otherwise specified in

638 that section.

639 ~~5. Section 379.354(16), prohibiting the making, forging,~~

640 ~~counterfeiting, or reproduction of a recreational license or~~

641 ~~possession of same without authorization from the commission.~~

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642 6. Section 379.404(5), prohibiting the sale of illegally-
643 taken deer or wild turkey.

644 7. Section 379.405, prohibiting the molestation or theft of
645 freshwater fishing gear.

646 8. Section 379.409, prohibiting the unlawful killing,
647 injuring, possessing, or capturing of alligators or other
648 crocodilia or their eggs.

649 9. Section 379.411, prohibiting the intentional killing or
650 wounding of any species designated as endangered, threatened, or
651 of special concern.

652 10. Section 379.4115, prohibiting the killing of any
653 Florida or wild panther.

654 (b) A person who commits a Level Four violation commits a
655 felony of the third degree, punishable as provided in s.
656 775.082, ~~or~~ s. 775.083, or s. 775.084.

657 (5) ILLEGAL ACTIVITIES WHILE COMMITTING BURGLARY OR
658 TRESPASS.—In addition to any other penalty provided by law, a
659 person who violates the criminal provisions of this chapter or
660 the rules or orders of the commission by illegally killing,
661 taking, possessing, or selling fish and wildlife as defined in
662 s. 379.101, in or out of season, while violating chapter 810
663 shall pay a fine of \$500 for each such violation, plus court
664 costs and any restitution ordered by the court. All fines
665 collected under this subsection shall be remitted by the clerk
666 of the court to the Department of Revenue to be deposited into
667 the State Game Trust Fund of the Fish and Wildlife Conservation
668 Commission.

669 ~~(5) VIOLATIONS OF CHAPTER. Except as provided in this~~
670 ~~chapter:~~

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671 ~~(a) A person who commits a violation of any provision of~~
672 ~~this chapter commits, for the first offense, a misdemeanor of~~
673 ~~the second degree, punishable as provided in s. 775.082 or s.~~
674 ~~775.083.~~

675 ~~(b) A person who is convicted of a second or subsequent~~
676 ~~violation of any provision of this chapter commits a misdemeanor~~
677 ~~of the first degree, punishable as provided in s. 775.082 or s.~~
678 ~~775.083.~~

679 (6) SUSPENSION OR FORFEITURE OF LICENSE.—The court may
680 order the suspension or forfeiture of any license or permit
681 issued under this chapter to a person who is found guilty of
682 committing a violation of this chapter.

683 (7) CONVICTION DEFINED.—As used in this section, the term
684 "conviction" means any judicial disposition other than acquittal
685 or dismissal.

686 Section 21. Section 379.403, Florida Statutes, is repealed.

687 Section 22. Subsection (1) of section 379.409, Florida
688 Statutes, is amended, and subsection (4) is added to that
689 section, to read:

690 379.409 Illegal killing, possessing, or capturing of
691 alligators or other crocodilia or eggs; confiscation of
692 equipment.—

693 (1) It is unlawful to intentionally kill, injure, possess,
694 or capture, or attempt to kill, injure, possess, or capture, an
695 alligator or other crocodilian, or the eggs of an alligator or
696 other crocodilian, unless authorized by the rules of the Fish
697 and Wildlife Conservation Commission. ~~Any person who violates~~
698 ~~this section is guilty of a felony of the third degree,~~
699 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084,~~

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700 ~~in addition to such other punishment as may be provided by law.~~
 701 Any equipment, including but not limited to weapons, vehicles,
 702 boats, and lines, used by a person in the commission of a
 703 violation of any law, rule, regulation, or order relating to
 704 alligators or other crocodilia or the eggs of alligators or
 705 other crocodilia shall, upon conviction of such person, be
 706 confiscated by the Fish and Wildlife Conservation Commission and
 707 disposed of according to rules, orders, and regulations of the
 708 commission. The arresting officer shall promptly make a return
 709 of the seizure, describing in detail the property seized and the
 710 facts and circumstances under which it was seized, including the
 711 names of all persons known to the officer who have an interest
 712 in the property.

713 (4) A person who violates this section commits a Level Four
 714 violation under s. 379.401, in addition to such other punishment
 715 as may be provided by law.

716 Section 23. Section 379.411, Florida Statutes, is amended
 717 to read:

718 379.411 Intentional killing or wounding of any species
 719 designated as endangered, threatened, or of special concern;
 720 criminal penalties.—It is unlawful for a person to intentionally
 721 kill or wound any fish or wildlife of a species designated by
 722 the Fish and Wildlife Conservation Commission as endangered,
 723 threatened, or of special concern, or to intentionally destroy
 724 the eggs or nest of any such fish or wildlife, except as
 725 provided for in the rules of the commission. A Any person who
 726 violates this section commits a Level Four violation under s.
 727 379.401 this provision with regard to an endangered or
 728 threatened species is guilty of a felony of the third degree,

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729 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

730 Section 24. Subsection (3) of section 379.4115, Florida
 731 Statutes, is amended to read:

732 379.4115 Florida or wild panther; killing prohibited;
 733 penalty.—

734 (3) A person who violates this section commits a Level Four
 735 violation under s. 379.401 convicted of unlawfully killing a
 736 Florida panther, or unlawfully killing any member of the species
 737 of panther occurring in the wild, is guilty of a felony of the
 738 third degree, punishable as provided in s. 775.082, s. 775.083,
 739 or s. 775.084.

740 Section 25. Paragraph (a) of subsection (2) of section
 741 379.3004, Florida Statutes, is amended to read:

742 379.3004 Voluntary Authorized Hunter Identification
 743 Program.—

744 (2) Any person hunting on private land enrolled in the
 745 Voluntary Authorized Hunter Identification Program shall have
 746 readily available on the land at all times when hunting on the
 747 property written authorization from the owner or his or her
 748 authorized representative to be on the land for the purpose of
 749 hunting. The written authorization shall be presented on demand
 750 to any law enforcement officer, the owner, or the authorized
 751 agent of the owner.

752 (a) For purposes of this section, the term "hunting" means
 753 to be engaged in or reasonably equipped to engage in the pursuit
 754 or taking by any means of any animal described in s. 379.101(20)
 755 or (21) s. 379.101(19) or (20), and the term "written
 756 authorization" means a card, letter, or other written instrument
 757 which shall include, but need not be limited to, the name of the

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758 person or entity owning the property, the name and signature of
 759 the person granting the authorization, a description by
 760 township, range, section, partial section, or other geographical
 761 description of the land to which the authorization applies, and
 762 a statement of the time period during which the authorization is
 763 valid.

764 Section 26. Paragraph (d) of subsection (5) of section
 765 379.337, Florida Statutes, is amended to read:

766 379.337 Confiscation, seizure, and forfeiture of property
 767 and products.—

768 (5) CONFISCATION AND SALE OF PERISHABLE SALTWATER PRODUCTS;
 769 PROCEDURE.—

770 (d) For purposes of confiscation under this subsection, the
 771 term "saltwater products" has the meaning specified ~~set out~~ in
 772 s. 379.101(37) ~~s. 379.101(36)~~, except that the term does not
 773 include saltwater products harvested under the authority of a
 774 recreational license unless the amount of such harvested
 775 products exceeds three times the applicable recreational bag
 776 limit for trout, snook, or redfish.

777 Section 27. Paragraph (b) of subsection (4) of section
 778 589.19, Florida Statutes, is amended to read:

779 589.19 Creation of certain state forests; naming of certain
 780 state forests; Operation Outdoor Freedom Program.—

781 (4)

782 (b) Participation in the Operation Outdoor Freedom Program
 783 ~~is shall be~~ limited to Florida residents, as defined in s.

784 379.101(31)(b) ~~s. 379.101(30)(b)~~, who:

785 1. Are honorably discharged military veterans certified by
 786 the United States Department of Veterans Affairs or its

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787 predecessor or by any branch of the United States Armed Forces
 788 to be at least 30 percent permanently service-connected
 789 disabled;

790 2. Have been awarded the Military Order of the Purple
 791 Heart; or

792 3. Are active duty servicemembers with a service-connected
 793 injury as determined by his or her branch of the United States
 794 Armed Forces.

795 Proof of eligibility under this subsection, as prescribed by the
 796 Florida Forest Service, may be required.

797 Section 28. Paragraph (h) of subsection (2) of section
 798 810.09, Florida Statutes, is amended to read:

800 810.09 Trespass on property other than structure or
 801 conveyance.—

802 (2)

803 (h) Any person who in taking or attempting to take any
 804 animal described in s. 379.101(20) or (21) ~~s. 379.101(19) or~~
 805 ~~(20)~~, or in killing, attempting to kill, or endangering any
 806 animal described in s. 585.01(13) knowingly propels or causes to
 807 be propelled any potentially lethal projectile over or across
 808 private land without authorization commits trespass, a felony of
 809 the third degree, punishable as provided in s. 775.082, s.
 810 775.083, or s. 775.084. For purposes of this paragraph, the term
 811 "potentially lethal projectile" includes any projectile launched
 812 from any firearm, bow, crossbow, or similar tensile device. This
 813 section does not apply to any governmental agent or employee
 814 acting within the scope of his or her official duties.

815 Section 29. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb. 11, 2016
Meeting Date

SB 1282
Bill Number (if applicable)

Topic Amendment to FWC agency bill

436274
Amendment Barcode (if applicable)

Name Jackie Fauls

Job Title Legislative Affairs Director

Address 620 S. Meridian Street

Phone 850-487-3795

Tallahassee FL 32399
City State Zip

Email jackie.fauls@myfwc.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fish & Wildlife Conservation Commission

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb. 11, 2016
Meeting Date

SB 1282
Bill Number (if applicable)

833622
Amendment Barcode (if applicable)

Topic Amendment to FWC agency bill

Name Jackie Fauls

Job Title Legislative Affairs Director

Address 600 S. Meridian Street

Phone 850-487-3795

Tallahassee FL 32399
City State Zip

Email jackie.fauls@myfwc.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fish & Wildlife Conservation Commission

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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Feb. 11, 2016
Meeting Date

SB 1282
Bill Number (if applicable)

Topic FWC Agency Bill

Amendment Barcode (if applicable)

Name Jackie Faulstich

Job Title Legislative Affairs Director

Address 600 S. Meridian Street

Phone ⁸⁵⁰⁻ 487-3795

Tallahassee FL 32399
City State Zip

Email jackie.faulstich@myfwc.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

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S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Community Affairs
Ethics and Elections

SENATOR CHARLES S. DEAN, SR.
5th District

January 20, 2016

The Honorable Alan Hays
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays,

I respectfully request you place Senate Bill 1282, relating to the Fish and Wildlife Conservation Commission, on your Appropriations Subcommittee on General Government agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Jamie DeLoach, Staff Director

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- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: SB 1300

INTRODUCER: Senator Dean

SUBJECT: At-risk Vessels

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	Favorable
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1300 addresses vessels that may become derelict. The bill:

- Makes it unlawful for a vessel owner to anchor on, moor on, or occupy the waters of the state when that vessel is at risk of becoming derelict;
- Provides conditions under which a vessel may be considered at risk of becoming derelict;
- Provides civil penalties for vessel owners whose vessels are determined to be at risk of becoming derelict;
- Provides an exemption for vessels that are moored to a private dock or wet slip with the consent of the owner for the purpose of being repaired; and
- Provides that violations may be enforced by a uniform boating citation mailed to the registered owner of the vessel.

The bill will have an insignificant, positive fiscal impact on state funds.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Derelict Vessels

Derelict vessels are vessels¹ that are left, stored, or abandoned:

- In a wrecked, junked, or substantially dismantled condition upon any public waters of this state;

¹ Section 327.02, F.S., defines vessel as synonymous with boat as referenced in FLA. CONST. art. VII, s.1(b) (1968), and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water. FLA. CONST. art. VII, s.1(b) (1968) provides, “motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.”

- At a port in this state without the consent of the agency having jurisdiction thereof; or
- Docked, grounded, or beached upon the property of another without the consent of the owner of the property.²

Removal of Derelict Vessels

Section 327.70, F.S., provides that enforcement of chapters 327 and 328, F.S., which concern vessel safety and vessel title certificates, liens, and registration, may be enforced by the Division of Law Enforcement of Florida Fish and Wildlife Conservation Commission (FWC) and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S.³ Section 327.44, F.S., provides authorization for the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. Additionally, s. 823.11, F.S., provides authorization for the relocation or removal of a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.

Costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until those costs are paid.⁴

Punishment for Violations of Derelict Vessel Provisions

It is unlawful to store, leave, or abandon a derelict vessel in Florida.⁵ Those who are found in violation of this provision commit a first degree misdemeanor, punishable by a term of imprisonment of no more than one year⁶ and a fine of up to \$1,000.⁷ Additionally, s. 376.16, F.S., provides that violations of certain provisions, including violations of derelict vessel laws, may be punishable by a civil penalty of up to \$50,000 per violation per day.⁸ Each day during any portion of which the violation occurs constitutes a separate offense.⁹

Fines and fees assessed for noncriminal infractions under s. 327.73, F.S., such as operation of an unregistered or unnumbered vessel, careless operation, and violations of navigation rules are deposited into the Marine Resources Conservation Trust Fund within the FWC for boating safety

² Section 823.11(1)(b), F.S.

³ Section 943.10, F.S. defines law enforcement officer as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁴ Section 705.103(4), F.S.

⁵ Section 823.11(2), F.S.

⁶ Section 775.082(4)(a), F.S.

⁷ Section 775.083(1)(d), F.S.

⁸ Section 376.16(1), F.S.

⁹ *Id.*

education purposes.¹⁰ If a person fails to appear or otherwise properly respond to a uniform boating citation, that person will also be charged with the offense of failing to respond to the citation and, upon conviction, be found guilty of a second degree misdemeanor,¹¹ punishable by a term of imprisonment of no more than 60 days¹² and a fine of no more than \$500.¹³

Costs of Removal of Derelict Vessels

According to the FWC, removal costs of derelict vessels are approximately \$350 to \$450 per foot of vessel length.¹⁴ However, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at a much lower cost. Relocation may cost nothing if a law enforcement officer is able to tow it to a suitable location.¹⁵ Costs for professional towing services are approximately \$200 per hour.¹⁶

The FWC maintains a statewide database of vessels investigated by a law enforcement officer and deemed to be either derelict or at risk of becoming derelict, although the database related to at-risk vessels is largely incomplete. This is due to the fact that the current effort related to at-risk vessels is a voluntary community-oriented policing effort.¹⁷ The FWC estimates that 166 derelict vessels were removed in 2014 by local governments. Approximately \$665,500 was spent by local governments on the removal of those vessels, which is an average removal cost of \$4,006 per vessel.¹⁸

Due to the problem of derelict vessels and the costs of removing them, the FWC held six public meetings in 2015 to engage the public on various solutions. Boat owners, boating organizations, marine industries, and local governments participated in the meetings. Participants were asked to respond to a survey to indicate their levels of support for eight concepts addressing derelict vessels. The concept of prohibiting vessels deemed “at risk” of becoming derelict received the most support from those surveyed, with 85.2 percent of survey respondents indicating they either “support” or “highly support” the concept.¹⁹

Local Government Authority

Local governments are only authorized to enact and enforce regulations regarding the mooring or anchoring of vessels that are located within marked boundaries of a mooring field.²⁰ The inability to regulate vessels outside of mooring fields has led to problems that include:

- The locations where anchored vessels accumulate;
- Unattended vessels;

¹⁰ Section 327.73(8), F.S.

¹¹ Section 327.73(1), F.S.

¹² Section 775.082(4)(b), F.S.

¹³ Section 775.083(1)(e), F.S.

¹⁴ FWC, *House Bill 7025 Agency Analysis* (Jan. 6, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁵ *Id.* Immediate removal of a derelict vessel was a concept that received support among eight proposals for dealing with the problem of derelict vessels.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 327.60, F.S.

- Anchored vessels which are dragging anchor or not showing proper lighting;
- Vessels which are not maintained properly; and
- Vessels which become derelict.²¹

III. Effect of Proposed Changes:

Section 1 creates s. 327.4107, F.S., to provide that vessels at risk of becoming derelict may not anchor on, moor on, or occupy the waters of the state.

The bill provides that an officer of the FWC or of any other law enforcement agency specified in s. 327.70, F.S., may determine that a vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on, or has taken on, water without an effective means to dewater;
- Spaces on the vessel which are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor; and
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunken or partially sunken.

The bill provides that a person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy such waters commits a noncriminal infraction, punishable by a civil penalty as provided in s. 327.73, F.S., which is added in section 3 of the bill. The civil penalties are in addition to any other penalties provided for in law.

The bill provides an exemption for vessels that are moored to a private dock or wet slip with the consent of the owner for the purpose of being repaired.

Section 2 amends s. 327.70, F.S., to provide that violations of s. 327.4107, F.S., may be enforced by a uniform boating citation mailed to the registered owner of the vessel.

Section 3 amends s. 327.73, F.S., to provide the following civil penalties for violations of s. 327.4107, F.S. The civil penalties are:

- For a first offense: \$50;
- For a second offense occurring 30 days or more after a first offense: \$100; and
- For a third or subsequent offense occurring 30 days or more after a previous offense: \$250.

The civil penalties are remitted by the clerk of court to the Department of Revenue and deposited into the Marine Resources Conservation Trust fund for boating and education purposes.²²

Section 4 of the bill provides an effective date of July 1, 2016.

²¹ FWC, *Anchoring and Mooring Pilot Program: Report of Findings and Recommendations* (Dec. 31, 2013), pg. 3, available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf> (last visited Jan. 21, 2016).

²² Section 327.73(8), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1300 may have a negative but indeterminate effect on boat owners due to new penalties imposed on vessel owners whose vessels are found to be in danger of becoming derelict. These effects are not anticipated to be significant.²³

C. Government Sector Impact:

The bill may have a positive but indeterminate impact on local and state governments if individuals repair or move their vessels rather than allow them to become derelict.

A positive but indeterminate fiscal impact may result from the penalties imposed for violations of the provisions of the bill. According to the FWC, these effects are not anticipated to be significant.²⁴

The proposed Senate General Appropriations Bill for the 2016-2017 fiscal year, SB 2500, includes \$1,500,000 from the General Revenue Fund for removal of derelict vessels.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²³ FWC, *House Bill 7025 Agency Analysis* (Jan. 6, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

²⁴ *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.70 and 327.73.

This bill creates the following section of the Florida Statutes: 327.4107.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Dean

5-00194A-16

20161300__

A bill to be entitled

An act relating to at-risk vessels; creating s. 327.4107, F.S.; prohibiting a vessel that is at risk of becoming derelict from anchoring on, mooring on, or occupying the waters of this state; authorizing an officer of the Fish and Wildlife Conservation Commission or of specified law enforcement agencies to determine that a vessel is at risk of becoming derelict if certain conditions exist; providing that a person who anchors or moors such a vessel or allows it to occupy waters of this state commits a noncriminal infraction; providing penalties; providing applicability; amending s. 327.70, F.S.; providing for enforcement of such violations by citation mailed to the owner of the vessel; amending s. 327.73, F.S.; providing civil penalties for such violations; providing an effective date.

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

Section 1. Section 327.4107, Florida Statutes, is created to read:

327.4107 Vessels at risk of becoming derelict on waters of this state.—

(1) To prevent vessels in neglected or deteriorating condition from reaching a likely and foreseeable state of disrepair, a vessel that is at risk of becoming derelict pursuant to subsection (2) may not anchor on, moor on, or occupy the waters of this state.

(2) An officer of the commission or of a law enforcement agency specified in s. 327.70 may determine that a vessel is at risk of becoming derelict if any of the following conditions

Page 1 of 4

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exist:

(a) The vessel is taking on, or has taken on, water without an effective means to dewater.

(b) Spaces on the vessel which are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.

(c) The vessel has broken loose or is in danger of breaking loose from its anchor.

(d) The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunken or partially sunken.

(3) A person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy such waters commits a noncriminal infraction, punishable as provided in s. 327.73.

(4) The penalty under this section is in addition to other penalties provided by law.

(5) This section does not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs.

Section 2. Paragraph (a) of subsection (2) of section 327.70, Florida Statutes, is amended to read:

327.70 Enforcement of this chapter and chapter 328.—

(2) (a) Noncriminal violations of the following statutes may be enforced by a uniform boating citation mailed to the registered owner of an unattended vessel anchored, aground, or moored on the waters of this state:

1. Section 327.33(3) (b), relating to navigation rules.

Page 2 of 4

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62 2. Section 327.4107, relating to vessels at risk of
63 becoming derelict.

64 ~~3.2-~~ Section 327.44, relating to interference with
65 navigation.

66 ~~4.3-~~ Section 327.50(2), relating to required lights and
67 shapes.

68 ~~5.4-~~ Section 327.53, relating to marine sanitation.

69 ~~6.5-~~ Section 328.48(5), relating to display of decal.

70 ~~7.6-~~ Section 328.52(2), relating to display of number.

71 Section 3. Paragraph (y) is added to subsection (1) of
72 section 327.73, Florida Statutes, to read:

73 327.73 Noncriminal infractions.-

74 (1) Violations of the following provisions of the vessel
75 laws of this state are noncriminal infractions:

76 (y) Section 327.4107, relating to vessels at risk of
77 becoming derelict on waters of this state, for which the civil
78 penalty is:

79 1. For a first offense, \$50.

80 2. For a second offense occurring 30 days or more after a
81 first offense, \$100.

82 3. For a third or subsequent offense occurring 30 days or
83 more after a previous offense, \$250.

84
85 Any person cited for a violation of any provision of this
86 subsection shall be deemed to be charged with a noncriminal
87 infraction, shall be cited for such an infraction, and shall be
88 cited to appear before the county court. The civil penalty for
89 any such infraction is \$50, except as otherwise provided in this
90 section. Any person who fails to appear or otherwise properly

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91 respond to a uniform boating citation shall, in addition to the
92 charge relating to the violation of the boating laws of this
93 state, be charged with the offense of failing to respond to such
94 citation and, upon conviction, be guilty of a misdemeanor of the
95 second degree, punishable as provided in s. 775.082 or s.
96 775.083. A written warning to this effect shall be provided at
97 the time such uniform boating citation is issued.

98 Section 4. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

1306

Bill Number (if applicable)

Topic AT RISK VESSELS

Amendment Barcode (if applicable)

Name STEPHEN JAMES

Job Title _____

Address 100 S. MONROE

Phone 850-922-4300

Street

TALLAHASSEE FL

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLA ASSOC. OF COUNTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1300
Bill Number (if applicable)

Meeting Date _____

Topic At Risk Vessels

Amendment Barcode (if applicable) _____

Name Lisa Henning

Job Title Consultant

Address 242 Office Plaza Dr

Phone 850-766-8808

Tallahassee, FL 32301
City State Zip

Email lisa@timminsconsulting.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Marine Industries Association of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-11
Meeting Date

1300
Bill Number (if applicable)

Topic At Risk Vessels

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title _____

Address 433 N Magnolia
Street

Phone 339 6211

Tall FL 32301
City State Zip

Email rao@theriaquelaw.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

1300

Bill Number (if applicable)

Topic AT-RISK VESSELS

Amendment Barcode (if applicable)

Name DIANA PADGETT

Job Title CONSULTANT

Address 1371 MILLSTREAM RD.

Street

Phone 850-212-4204

TALL., FL. 32312

City

State

Zip

Email DHPCONSULTING@

EARTH LINK.NET

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing MARINE INDUSTRIES OF PALM BEACH COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

127110
COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Community Affairs
Ethics and Elections

SENATOR CHARLES S. DEAN, SR.
5th District

January 27, 2016

The Honorable Alan Hays
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays,

I respectfully request you place Senate Bill 1300, relating to At-Risk Vessels, on your Appropriations Subcommittee on General Government agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Jamie DeLoach, Staff Director

16 JAN 27 PM 2:52
SENATE APPROPRIATIONS RECEIVED
STAFF DIR. CHAIRMAN SENATE

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: PCS/CS/SB 1422 (364684)

INTRODUCER: Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Simmons

SUBJECT: Insurer Regulatory Reporting

DATE: February 15, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1422 revises provisions within the Insurance Code relating to solvency requirements and regulatory oversight of insurers by the Office of Insurance Regulation (OIR).

The bill implements the Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act and the Corporate Governance Annual Disclosure Model Act. The model acts originated from the National Association of Insurance Commissioners' Solvency Modernization Initiative.

Specifically, the bill:

- Provides criteria for the OIR to exempt certain insurers and insurance groups and to provide waivers of ORSA requirements;
- Provides that the ORSA and Corporate Governance filings and related documents are privileged and not subject to subpoena or discovery directly from the OIR;
- Authorizes the OIR to retain third-party consultants to assist in its administration of the bill and specifies requirements for such third-party consultants;
- Authorizes the Financial Services Commission to adopt rules to implement the ORSA and Corporate Governance requirements; and
- Authorizes the OIR to impose sanctions for failure to submit ORSA summary reports or Corporate Governance reports.

There is an insignificant fiscal impact to the OIR that can be handled within existing resources. The bill is effective October 1, 2016, and is contingent upon SB 1416 (Public Record Exemption) becoming law.

II. Present Situation:

State Regulation of Insurance

States are the primary regulators of insurance companies. The state of domicile serves as the primary regulator for insurers. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. The OIR¹ is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company,² monitoring the financial condition of insurers through examinations and audits, and procedures for the administrative supervision,³ rehabilitation,⁴ or liquidation⁵ of an insurance company if it is in unsound financial condition or insolvent.

National Association of Insurance Commissioners Model Acts

The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. The NAIC accreditation is a certification that a state insurance regulator is fulfilling legal, financial, and organizational standards. The NAIC establishes accreditation effective dates for states to adopt in substantially similar form models and acts for purposes of NAIC accreditation review. As a member of the NAIC, the OIR is required to participate in the Financial Regulation Standards and Accreditation Program. The OIR is accredited by the NAIC. The last five-year review occurred in 2013.

In response to the 2008 financial crisis, the NAIC launched the Solvency Modernization Initiative to review existing solvency oversight tools and early warning mechanisms and identify areas of potential improvement. Two of the model acts emanating from this initiative are the ORSA Model Act and the Corporate Governance Annual Disclosure Model Act.

The ORSA Model Act

The ORSA Model Act requires insurers to conduct their own internal assessment of all reasonably foreseeable and relevant material risks (e.g., underwriting, credit, market) potentially affecting their ability to meet policyholder obligations. This information will provide regulators

¹ Section 20.121(3)(a), F.S.

² Sections 624.411 - 624.414, F.S.

³ Administrative supervision allows the Department of Financial Services (DFS) to supervise the management of a consenting troubled insurance company in an attempt to cure the company's troubles rather than close it down.

⁴ In rehabilitation, the DFS is authorized as receiver to conduct all business of the insurer in an attempt to place the insurance company back in sound financial condition.

⁵ In liquidation, the DFS is authorized as receiver to gather the insurance company's assets, convert them to cash, distribute them to various claimants, and shut down the company.

with a more comprehensive view of the ability of an insurer to withstand financial stress. According to the ORSA Model Act and ORSA Guidance Manual, the ORSA has two primary goals: “to foster an effective level of Enterprise Risk Management...,” and “provide a group-level perspective on risk and capital, as a supplement to the existing legal entity view.”⁶

The ORSA Model Act requires insurers (or an insurance group, as applicable) to:

- Maintain a risk management framework for identifying assessing, monitoring, managing and reporting on its material and relevant risks;
- Conduct an ORSA at least annually; and
- File an ORSA summary report based on the ORSA Guidance Manual with their domestic regulator or lead state (for an insurance group) beginning in 2017.

The ORSA Model Act and ORSA Guidance Manual give the insurer and insurance group flexibility with respect to the form and content of the ORSA summary report, recognizing that each insurer and insurance group’s business, strategic planning, and approach to enterprise risk management is unique. The ORSA summary reports are filed with the lead state regulator of the insurance group. Depending on the group, the OIR may or may not be the lead state regulator.

Insurers with direct premium below \$500 million and an insurance group of which the insurer is a member with premium below \$1 billion are exempt from the requirements of the ORSA Model Act. However, based on “unique circumstances,” the OIR may require an exempt insurer to file an ORSA summary report. The OIR may waive the filing requirement for non-exempt insurers.

The ORSA Model Act is an NAIC accreditation standard effective January 1, 2018. Thirty-four⁷ jurisdictions have adopted a substantially similar version of the ORSA Model Act. Florida has not yet adopted it in any form.

Corporate Governance Model Act

During full-scope, onsite financial examinations, the OIR obtains some information on insurer governance structures, processes and practices. However, these examinations are typically limited to domestic insurers and occur only once every five years.⁸ During the interval between these examinations, the OIR’s access to insurer governance practices is more limited. This can mask changes and activities having a substantial bearing on the financial condition of the insurer.

The Corporate Governance Model Act is designed to provide insurance regulators with sufficient information on insurer governance structures, practices, and processes through an annual disclosure. The Corporate Governance Model Act does not mandate any particular standards or procedures beyond those already provided under state law. The NAIC simultaneously adopted a Corporate Governance Model Regulation that delineates the contents of the annual disclosure.

⁶ National Association of Insurance Commissioners, Own Risk and Solvency Assessment (ORSA) Brief, http://www.naic.org/cipr_topics/topic_own_risk_solvency_assessment.htm (last visited Jan. 23, 2016).

⁷ Office of Insurance Regulation, *Senate Bill 1422 Legislative Analysis* (Jan. 22, 2016) (on file with Banking and Insurance Committee).

⁸ Section 624.316 (2)(a), F.S., provides that the OIR may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, and shall examine each domestic insurer not less frequently than once every 5 years.

Insurers or insurer groups must file a Corporate Governance Annual Disclosure with their domestic regulator or the lead state regulator (for an insurance group) no later than June 1 of each year beginning in 2017. The key items in the Corporate Governance disclosure include:

- The insurer's corporate governance framework and structure including duties and structure of the Board of Directors and its committees;
- The policies and practices of its Board of Directors and significant committees including appointment practices, the frequency of meetings held and review procedures;
- The policies and practices directing Senior Management including a description of defined suitability standards, the insurer's code of conduct and ethics, performance evaluation and compensation practices, and succession planning; and
- The processes by which the Board of Directors, its committees and senior management ensure an appropriate level of oversight to the critical risk areas impacting the insurer's business activities including risk management processes, the actuarial function, and investment, reinsurance and business strategy decision-making processes.

The Corporate Governance Model Act is expected to become an NAIC accreditation standard.⁹ According to the NAIC, five states¹⁰ have adopted a version of the Corporate Governance Model Act in a substantially similar form. Florida has not adopted it.

III. Effect of Proposed Changes:

Section 1 creates s. 628.8015, F.S., which requires insurers or insurance groups (if applicable), to file an ORSA and Corporate Governance information with their domestic regulator or lead state, beginning in 2017.

Definitions

In addition to defining “corporate governance annual disclosure,” “ORSA,” “ORSA guidance manual,” and “ORSA summary report,” the bill defines the following:

- “Insurer” is defined to have the same meaning as in s. 624.03, F.S.,¹¹ but excludes state and federal agencies, authorities, instrumentalities, possessions, territories, or political subdivisions of a state.
- “Insurance group” is defined to mean insurers and affiliates included within an insurance holding company system.
- “Senior management” is defined to mean any corporate officer responsible for reporting information to the board of directors at regular intervals or providing information to shareholders or regulators. This includes, but is not limited to, a number of executives such as chief executive officer, chief financial officer, and chief risk officer.

⁹ According to the NAIC, “The F Committee currently has out for a one year exposure the 2014 revisions to Models #305 and #306 for inclusion to the Accreditation Part A standards. The exposure period for this will end 12/31/2016. The F Committee will discuss this again at the 2017 Spring National Meeting and likely expose it for 30 days after – then consider adoption at the 2017 Summer National Meeting...if the Committee votes to adopt them into the Part A standards, the earliest it could be required for accreditation would be 1/1/19. There is a possibility the timeline could change.” NAIC correspondence (Jan. 19, 2016) (on file with Senate Committee on Banking and Insurance).

¹⁰ California, Indiana, Iowa, Louisiana, and Vermont have adopted the model act. Office of Insurance Regulation, *Senate Bill 1422 Legislative Analysis* (Jan. 22, 2016) (on file with Banking and Insurance Committee).

¹¹ Section 624.03, F.S., defines “insurer” to mean every person engaged as an indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.

ORSA Provisions

The bill incorporates the three major components of the ORSA, to require insurers or insurance groups to:

- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
 - This requirement may be satisfied by being a member of an insurance group with a risk management framework applicable to the insurer's operations;
- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group), consistent with and comparable to the process in the ORSA Guidance Manual;¹²
- File an ORSA summary report, based on the ORSA Guidance Manual, with their domestic regulator or lead state (for an insurance group), beginning in 2017, which must:
 - Be submitted once every calendar year;
 - Include notification to the OIR of its proposed annual submission date by December 1, 2016; the initial ORSA summary report must be submitted by December 31, 2017;
 - Include a brief description of material changes and updates from the prior year's report;
 - Be signed by the chief risk officer or chief executive officer responsible for overseeing the enterprise risk management process; provide copy to board of directors or appropriate board committee; and
 - Be prepared in accordance with the ORSA guidance manual and insurer must maintain and make available for OIR examination documentation and supporting information.

ORSA Exemption & Waiver

The bill exempts an insurer from the ORSA requirement if:

- Its annual direct written and unaffiliated assumed premium is less than \$500 million (excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program), or
- It is a member of an insurance group with an annual direct written and unaffiliated assumed premium of \$1 billion or less (excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program).¹³

The bill also creates reporting obligations, contingent on the exempt status of the insurer and its insurance group. The OIR may still require an exempt insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA summary report based on certain circumstances, such as risk-based capital that triggers a company-action-level event,¹⁴ the

¹² The bill defines "ORSA guidance manual" as the ORSA manual developed and adopted by the NAIC. See NAIC, *ORSA Guidance Manual* (Jul. 2014), at http://www.naic.org/store/free/ORSA_manual.pdf.

¹³ According to the OIR, two property and casualty insurer groups and five life and health insurer groups meet the ORSA threshold and have Florida as the lead state. OIR, *Q&A on ORSA and CGAD* (Nov. 15, 2015), on file with the Banking and Insurance Committee.

¹⁴ Section 624.81(11), F.S., authorizes the OIR to place an insurer under administrative supervision and order corrective action if the insurer is in unsound condition, exceeds its powers granted under its certificate of authority, or its practices are hazardous to the public. Commission rule defines "hazardous financial condition" in accordance with NAIC model regulation. Rule 69O-141.002, F.A.C.

exhibition of qualities of an insurer in hazardous financial condition, or if submission of the report is in the best interests of the state. In addition, the bill allows OIR to grant a waiver to an otherwise non-exempt insurer based on unique circumstances, and specifies criteria for the OIR to consider.

Corporate Governance

The bill requires insurers or insurer members of insurance groups (of which the OIR is the lead state regulator) to submit a Corporate Governance Annual Disclosure every June 1, with an initial disclosure to be submitted by December 31, 2018. The chief executive officer or corporate officer must sign the disclosure, and must describe the insurer or insurance group's governance framework and structure, relevant policies and practices, and processes for overseeing critical risk areas affecting business activities.

The bill specifies that the OIR may require the submission of the annual disclosure prior to December 31, 2018:

- Based on unique circumstances including type and volume of business written, ownership and structure, and federal and international requests.
- If the insurer meets one of the standards of an insurer deemed to be in a hazardous financial condition or exhibits qualities of an insurer in hazardous financial condition.
- If the insurer is a member of an insurance group where the OIR is the lead state regulator.
- If the OIR determines that is in the best interest of the state.

The bill allows insurers and insurance groups to provide corporate governance information at the ultimate controlling parent level, the intermediate holding company level, or at the individual legal entity level. Additionally, insurers and insurance groups may make their Corporate Governance Annual Disclosure at levels at which the insurer or insurance group 1) determines risk appetite, 2) oversees or exercises coordinated supervision of earnings, capital, liquidity, operations, and reputation of the insurer, or 3) at which legal liability would be placed for failure of general corporate governance duties. The insurer or insurance group must indicate their level of reporting and explain any subsequent changes, and may meet these requirements by referring other relevant and existing documents, such as the ORSA summary report, Holding Company B or F filings, and Securities and Exchange Commission proxy statements.

Insurers and insurance groups must report subsequent changes to the Corporate Governance Annual Disclosure. The lead state may request additional information and must review the Corporate Governance Annual Disclosure in accordance with the NAIC Financial Handbook. The insurer or insurance group must maintain and make available upon examination or request by the OIR any documentation and supporting information relating to the disclosure.

Privilege & Confidentiality of ORSA and Corporate Governance

The bill provides that the ORSA and Corporate Governance filings and related documents that are submitted pursuant to this new provision, s. 628.8015, F.S., are privileged and not subject to subpoena or discovery directly from the OIR. The bill prohibits the OIR, or any person acting under the OIR's authority (such as third-party consultants), from testifying as to such filings or related documents in a private civil action. However, the OIR or the Department of Financial

Services may use these filings and related documents in any regulatory or legal action it brings against an insurer as part of their official duties. The bill also provides that any applicable claims of privilege as to these filings and related documents are not waived simply because a disclosure to the OIR under this section or under any other provision of the Insurance Code. In 2014, substantially similar privilege language was enacted¹⁵ for other insurer regulatory filings, regarding insurance holding company registration statements and annual enterprise risk reports¹⁶ and annual actuarial opinions of reserves and supporting memoranda required of life insurers.¹⁷

Third-Party Consultants

The bill authorizes the OIR to retain third-party consultants at the expense of the insurer or the insurance group for assisting the OIR with ORSA and Corporate Governance Annual Disclosure responsibilities. The bill requires these third-party consultants to adhere to confidentiality and conflict of interest standards through a written agreement with the OIR. In other areas of the Insurance Code, the OIR has authority to contract with independent external auditors or examiners under the following provisions.¹⁸

Rulemaking

The bill authorizes the Financial Services Commission to adopt rules to administer the provisions of s. 628.8015, F.S.

Sanctions

Currently, s. 628.803, F.S., authorizes the OIR to impose sanctions on insurers and certain affiliated individuals of insurers for certain violations. The 2014 insurer solvency legislation authorizes the OIR to place an insurer under an order of supervision and to disapprove dividends or distributions, if the OIR finds that the insurer violated s. 628.461, F.S., (acquisition of controlling stock requirements) or s. 628.801, F.S., (insurance holding company registration statement and enterprise risk reporting requirements).¹⁹

Section 2 amends s. 628.803, F.S., to provide that the OIR may impose these fines for failure to submit an ORSA summary report or Corporate Governance Annual Disclosure, or may issue an order of supervision and disapprove dividends or distributions if an insurance company violates s. 628.8015, F.S., which is created by this bill. The OIR may impose a penalty of \$100 per day for failure to file a report, not to exceed \$10,000.

Section 3 provides the act is repealed on October 2, 2021, unless the Legislature reauthorizes the public records exemption provided in SB 1416 or similar legislation.

¹⁵ ch. 2014-101, ss. 8 and 11, Laws of Fla.

¹⁶ Section 628.801(4), F.S.

¹⁷ Section 625.1214, F.S.

¹⁸ Section 624.316(2)(e), F.S., the OIR general examination authority; s. 624.316(3), F.S., the OIR market conduct examination authority; s. 624.44(1)(c), F.S., multiple-employer welfare arrangements; and s. 641.27(2), F.S., health maintenance organization examinations.

¹⁹ Section 628.803(4), F.S.; ch. 2014-101, s. 12, Laws of Fla.

Section 4 provides the act will take effect October 1, 2016, if SB 1416 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurers may incur additional administrative costs associated with preparing and submitting the ORSA report and the Corporate Governance Annual Disclosure. However, under the provisions of the Corporate Governance Annual Disclosure, insurers and insurance groups are permitted to reference existing documents and filings. For purposes of ORSA filings, insurers are required to file the ORSA Summary reports with the lead state regulator of the insurance group, thereby avoiding regulatory redundancies associated with reporting in each state.

C. Government Sector Impact:

According to the OIR, implementation of the bill is expected to have an insignificant impact on technology systems. The OIR can accommodate the collection of any additional information through their current system.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁰ Office of Insurance Regulation, *Senate Bill 1422 Legislative Analysis* (Jan. 22, 2016) (on file with the Senate Committee on Banking and Insurance.)

VIII. Statutes Affected:

This bill substantially amends section 628.803 of the Florida Statutes.

This bill creates section 628.8015 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:

- Changes the date insurers must submit the annual disclosure to December 31, 2018, from December 31, 2017.
- Provides that the OIR may request the annual disclosure prior to December 31, 2018, under certain circumstances.
- Provides a contingency for repeal if the public records exemption in SB 1416 or similar legislation is not reenacted prior to expiration on October 2, 2021.

CS by Banking and Insurance on January 26, 2016:

The CS authorizes the Financial Services Commission to adopt rules; however, the adoption of such rules would be subject to the rule ratification provisions of s. 120.541(3), F.S. The CS also provides technical, conforming changes.

B. Amendments:

None.



243832

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
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Appropriations Subcommittee on General Government (Lee)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 202 - 208

and insert:

annual disclosure must be submitted by December 31, 2018.

b. An insurer or insurance group not required to submit a corporate governance annual disclosure under sub-subparagraph a. shall do so at the request of the office, but not more than once per calendar year. The insurer or insurance group shall notify the office of the proposed submission date within 30 days after



243832

11 the request of the office.

12 c. Before December 31, 2018, the office may require an
13 insurer or insurance group to provide a corporate governance
14 annual disclosure:

15 (I) Based on unique circumstances, including, but not
16 limited to, the type and volume of business written, the
17 ownership and organizational structure, federal agency requests,
18 and international supervisor requests;

19 (II) If the insurer has risk-based capital for a company
20 action level event pursuant to s. 624.4085(3), meets one or more
21 of the standards of an insurer deemed to be in hazardous
22 financial condition as defined in rules adopted pursuant to s.
23 624.81(11), or exhibits qualities of an insurer in hazardous
24 financial condition as determined by the office;

25 (III) If the insurer is the member of an insurer group of
26 which the office acts as the lead state regulator as determined
27 by the procedures in the most recent National Association of
28 Insurance Commissioners Financial Analysis Handbook; or

29 (IV) If the office determines that it is in the best
30 interest of the state.

31
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete line 12

35 and insert:

36 requiring the initial corporate governance annual
37 disclosure to be submitted to the Office of Insurance
38 Regulation by a specified date; authorizing the office
39 to require an insurer or insurance group to provide a



40 corporate governance annual disclosure before such
41 date under certain circumstances; specifying
42 requirements for preparing and annually filing the
43 corporate governance annual disclosure;



166092

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
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	.	

Appropriations Subcommittee on General Government (Lee)
recommended the following:

Senate Amendment (with title amendment)

Between lines 337 and 338

insert:

Section 3. Section 628.8015, Florida Statutes, and the amendments made by this act to s. 628.803, Florida Statutes, are repealed on October 2, 2021, unless, before that date, the Legislature saves from repeal through reenactment the amendments to s. 624.4212, Florida Statutes, made by SB 1416 or similar legislation.



166092

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17

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 19

and insert:

penalties to conform to the act; providing for
contingent repeal of the act; providing a

By the Committee on Banking and Insurance; and Senator Simmons

597-02617-16

20161422c1

A bill to be entitled

An act relating to insurer regulatory reporting; creating s. 628.8015, F.S.; defining terms; requiring an insurer to maintain a risk management framework; requiring certain insurers and insurance groups to conduct an own-risk and solvency assessment; providing requirements for the preparation and submission of an own-risk and solvency assessment summary report; providing exemptions and waivers; requiring certain insurers and members of an insurance group to prepare and submit a corporate governance annual disclosure; providing disclosure and preparation requirements; specifying privilege requirements and prohibitions for certain filings and related documents; authorizing the Office of Insurance Regulation to retain third-party consultants for certain purposes; authorizing the Financial Services Commission to adopt rules; amending s. 628.803, F.S.; revising provisions relating to penalties to conform to the act; providing a contingent effective date.

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

Section 1. Section 628.8015, Florida Statutes, is created to read:

628.8015 Own-risk and solvency assessment; corporate governance annual disclosure.-

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

(a) "Corporate governance annual disclosure" means a report filed by an insurer or insurance group in accordance with this section.

(b) "Insurance group" means insurers and affiliates

Page 1 of 12

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

597-02617-16

20161422c1

included within an insurance holding company system.

(c) "Insurer" has the same meaning as in s. 624.03.

However, the term does not include agencies, authorities, instrumentalities, possessions, or territories of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; or agencies, authorities, instrumentalities, or political subdivisions of a state.

(d) "Own-risk and solvency assessment" or "ORSA" means an internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the business plan of an insurer or insurance group and the sufficiency of capital resources to support those risks.

(e) "ORSA guidance manual" means the own-risk and solvency assessment guidance manual developed and adopted by the National Association of Insurance Commissioners.

(f) "ORSA summary report" means a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports.

(g) "Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing information to shareholders or regulators and includes, but is not limited to, the chief executive officer, chief financial officer, chief operations officer, chief risk officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other executive performing one or more of these functions.

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

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(2) OWN-RISK AND SOLVENCY ASSESSMENT.-

(a) Risk management framework.-An insurer shall maintain a risk management framework to assist in identifying, assessing, monitoring, managing, and reporting its material and relevant risks. An insurer may satisfy this requirement by being a member of an insurance group with a risk management framework applicable to the operations of the insurer.

(b) ORSA requirement.-Subject to paragraph (c), an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with and comparable to the process in the ORSA guidance manual. The ORSA must be conducted at least annually and whenever there have been significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

(c) ORSA summary report.-

1.a. A domestic insurer or insurer member of an insurance group of which the office is the lead state, as determined by the procedures in the most recent National Association of Insurance Commissioners Financial Analysis Handbook, shall:

(I) Submit an ORSA summary report to the office once every calendar year.

(II) Notify the office of its proposed annual submission date by December 1, 2016. The initial ORSA summary report must be submitted by December 31, 2017.

b. An insurer not required to submit an ORSA summary report pursuant to sub-subparagraph a. shall:

(I) Submit an ORSA summary report at the request of the office, but not more than once per calendar year.

(II) Notify the office of the proposed submission date

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within 30 days after the request of the office.

2. An insurer may comply with sub-subparagraph 1.a. or sub-subparagraph 1.b. by providing the most recent and substantially similar ORSA summary report submitted by the insurer, or another member of an insurance group of which the insurer is a member, to the chief insurance regulatory official of another state or the supervisor or regulator of a foreign jurisdiction. For purposes of this subparagraph, a "substantially similar" ORSA summary report is one that contains information comparable to the information described in the ORSA guidance manual as determined by the commissioner of the office. If the report is in a language other than English, it must be accompanied by an English translation.

3. The chief risk officer or chief executive officer of the insurer or insurance group responsible for overseeing the enterprise risk management process must sign the ORSA summary report attesting that, to the best of his or her knowledge and belief, the insurer or insurance group applied the enterprise risk management process described in the ORSA summary report and provided a copy of the report to the board of directors or the appropriate board committee.

4. The ORSA summary report must be prepared in accordance with the ORSA guidance manual. Documentation and supporting information must be maintained by the insurer and made available upon examination pursuant to s. 624.316 or upon the request of the office.

5. The ORSA summary report must include a brief description of material changes and updates since the prior year report.

6. The office's review of the ORSA summary report must be

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120 conducted, and any additional requests for information must be
 121 made, using procedures similar to those used in the analysis and
 122 examination of multistate or global insurers and insurance
 123 groups.

124 (d) Exemption.—

125 1. An insurer is exempt from the requirements of this
 126 subsection if:

127 a. The insurer has annual direct written and unaffiliated
 128 assumed premium, including international direct and assumed
 129 premium, but excluding premiums reinsured with the Federal Crop
 130 Insurance Corporation and the National Flood Insurance Program,
 131 of less than \$500 million; or

132 b. The insurer is a member of an insurance group and the
 133 insurance group has annual direct written and unaffiliated
 134 assumed premium, including international direct and assumed
 135 premium, but excluding premiums reinsured with the Federal Crop
 136 Insurance Corporation and the National Flood Insurance Program,
 137 of less than \$1 billion.

138 2. If an insurer is:

139 a. Exempt under sub-subparagraph 1.a., but the insurance
 140 group of which the insurer is a member is not exempt under sub-
 141 paragraph 1.b., the ORSA summary report must include every
 142 insurer within the insurance group. The insurer may satisfy this
 143 requirement by submitting more than one ORSA summary report for
 144 any combination of insurers if any combination of reports
 145 includes every insurer within the insurance group.

146 b. Not exempt under sub-subparagraph 1.a., but the
 147 insurance group of which it is a member is exempt under sub-
 148 paragraph 1.b., the insurer must submit to the office the

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149 ORSA summary report applicable only to that insurer.

150 3. The office may require an exempt insurer to maintain a
 151 risk management framework, conduct an ORSA, and file an ORSA
 152 summary report:

153 a. Based on unique circumstances, including, but not
 154 limited to, the type and volume of business written, ownership
 155 and organizational structure, federal agency requests, and
 156 international supervisor requests;

157 b. If the insurer has risk-based capital for a company
 158 action level event pursuant to s. 624.4085(3), meets one or more
 159 of the standards of an insurer deemed to be in hazardous
 160 financial condition as defined in rules adopted by the
 161 commission pursuant to s. 624.81(11), or exhibits qualities of
 162 an insurer in hazardous financial condition as determined by the
 163 office; or

164 c. If the office determines it is in the best interest of
 165 the state.

166 4. If an exempt insurer becomes disqualified for an
 167 exemption because of changes in premium as reported on the most
 168 recent annual statement of the insurer or annual statements of
 169 the insurers within the insurance group of which the insurer is
 170 a member, the insurer must comply with the requirements of this
 171 section effective 1 year after the year in which the insurer
 172 exceeded the premium thresholds.

173 (e) Waiver.—An insurer that does not qualify for an
 174 exemption under paragraph (d) may request a waiver from the
 175 office based upon unique circumstances. If the insurer is part
 176 of an insurance group with insurers domiciled in more than one
 177 state, the office must coordinate with the lead state and with

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178 the other domiciliary regulators in deciding whether to grant a
 179 waiver. In deciding whether to grant a waiver, the office may
 180 consider:

181 1. The type and volume of business written by the insurer.

182 2. The ownership and organizational structure of the
 183 insurer.

184 3. Any other factor the office considers relevant to the
 185 insurer or insurance group of which the insurer is a member.

186

187 A waiver granted pursuant to this paragraph is valid until
 188 withdrawn by the office.

189 (3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.-

190 (a) Scope.-This section does not prescribe or impose
 191 corporate governance standards and internal procedures beyond
 192 those required under applicable state corporate law or limit the
 193 authority of the office, or the rights or obligations of third
 194 parties, under s. 624.316.

195 (b) Disclosure requirement.-

196 1.a. An insurer, or insurer member of an insurance group,
 197 of which the office is the lead state regulator, as determined
 198 by the procedures in the most recent National Association of
 199 Insurance Commissioners Financial Analysis Handbook, shall
 200 submit a corporate governance annual disclosure to the office by
 201 June 1 of each calendar year. The initial corporate governance
 202 annual disclosure must be submitted by December 31, 2017.

203 b. An insurer or insurance group not required to submit a
 204 corporate governance annual disclosure under sub-subparagraph
 205 1.a. shall do so at the request of the office, but not more than
 206 once per calendar year. The insurer shall notify the office of

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207 the proposed submission date within 30 days after the request of
 208 the office.

209 2. The chief executive officer or corporate secretary of
 210 the insurer or the insurance group must sign the corporate
 211 governance annual disclosure attesting that, to the best of his
 212 or her knowledge and belief, the insurer has implemented the
 213 corporate governance practices and provided a copy of the
 214 disclosure to the board of directors or the appropriate board
 215 committee.

216 3.a. Depending on the structure of its system of corporate
 217 governance, the insurer or insurance group may provide corporate
 218 governance information at one of the following levels:

219 (I) The ultimate controlling parent level;

220 (II) An intermediate holding company level; or

221 (III) The individual legal entity level.

222 b. The insurer or insurance group may make the corporate
 223 governance annual disclosure at:

224 (I) The level used to determine the risk appetite of the
 225 insurer or insurance group;

226 (II) The level at which the earnings, capital, liquidity,
 227 operations, and reputation of the insurer are collectively
 228 overseen and the supervision of those factors is coordinated and
 229 exercised; or

230 (III) The level at which legal liability for failure of
 231 general corporate governance duties would be placed.

232

233 An insurer or insurance group must indicate the level of
 234 reporting used and explain any subsequent changes in the
 235 reporting level.

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236 4. The review of the corporate governance annual disclosure
 237 and any additional requests for information shall be made
 238 through the lead state as determined by the procedures in the
 239 most recent National Association of Insurance Commissioners
 240 Financial Analysis Handbook.

241 5. An insurer or insurance group may comply with this
 242 paragraph by cross-referencing other existing relevant and
 243 applicable documents, including, but not limited to, the ORSA
 244 summary report, Holding Company Form B or F filings, Securities
 245 and Exchange Commission proxy statements, or foreign regulatory
 246 reporting requirements, if the documents contain information
 247 substantially similar to the information described in paragraph
 248 (c). The insurer or insurance group shall clearly identify and
 249 reference the specific location of the relevant and applicable
 250 information within the corporate governance annual disclosure
 251 and attach the referenced document if it has not already been
 252 filed with, or made available to, the office.

253 6. Each year following the initial filing of the corporate
 254 governance annual disclosure, the insurer or insurance group
 255 shall file an amended version of the previously filed corporate
 256 governance annual disclosure indicating changes that have been
 257 made. If changes have not been made in the previously filed
 258 disclosure, the insurer or insurance group should so indicate.

259 (c) Preparation of the corporate governance annual
 260 disclosure.—

261 1. The corporate governance annual disclosure must be
 262 prepared in a manner consistent with this subsection.
 263 Documentation and supporting information must be maintained and
 264 made available upon examination pursuant to s. 624.316 or upon

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265 the request of the office.

266 2. The corporate governance annual disclosure must be as
 267 descriptive as possible and include any attachments or example
 268 documents used in the governance process.

269 3. The insurer or insurance group has discretion in
 270 determining the appropriate format of the corporate governance
 271 annual disclosure in communicating the required information and
 272 responding to inquiries, provided that the corporate governance
 273 annual disclosure includes material and relevant information
 274 sufficient to enable the office to understand the corporate
 275 governance structure, policies, and practices used by the
 276 insurer or insurance group.

277 4. The corporate governance annual disclosure must describe
 278 the:

279 a. Corporate governance framework and structure of the
 280 insurer or insurance group.

281 b. Policies and practices of the most senior governing
 282 entity and significant committees.

283 c. Policies and practices for directing senior management.

284 d. Processes by which the board, its committees, and senior
 285 management ensure an appropriate amount of oversight to the
 286 critical risk areas that have an impact on the insurer's
 287 business activities.

288 (4) CONFIDENTIALITY.—The filings and related documents
 289 submitted pursuant to subsections (2) and (3) are privileged and
 290 not subject to subpoena or discovery directly from the office.
 291 However, the department or office may use these filings and
 292 related documents in the furtherance of any regulatory or legal
 293 action brought against an insurer as part of the official duties

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294 of the department or office. A waiver of any applicable claim of
 295 privilege in these filings and related documents may not occur
 296 because of a disclosure to the office under this section,
 297 because of any other provision of the Insurance Code, or because
 298 of sharing under s. 624.4212. The office or a person receiving
 299 these filings and related documents, while acting under the
 300 authority of the office, or with whom such filings and related
 301 documents are shared pursuant to s. 624.4212, is not permitted
 302 or required to testify in any private civil action concerning
 303 any such filings or related documents.

304 (5) USE OF THIRD-PARTY CONSULTANTS.—The office may retain
 305 third-party consultants at the expense of the insurer or
 306 insurance group for the purpose of assisting it in the
 307 performance of its regulatory responsibilities under this
 308 section, including, but not limited to, the risk management
 309 framework, the ORSA, the ORSA summary report, and the corporate
 310 governance annual disclosure. A third-party consultant must
 311 agree, in writing, to:

312 (a) Adhere to confidentiality standards and requirements
 313 applicable to the office governing the sharing and use of such
 314 filings and related documents.

315 (b) Verify to the office, with notice to the insurer, that
 316 the consultant is free of any conflict of interest.

317 (c) Monitor compliance with applicable confidentiality and
 318 conflict of interest standards pursuant to a system of internal
 319 procedures.

320 (6) RULE ADOPTION.—The commission may adopt rules to
 321 administer this section.

322 Section 2. Subsections (1) and (4) of section 628.803,

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323 Florida Statutes, are amended to read:

324 628.803 Sanctions.—

325 (1) Any company failing, without just cause, to file any
 326 registration statement or certificate of exemption required to
 327 be filed pursuant to commission rules relating to this part or
 328 to submit an ORSA summary report or a corporate governance
 329 annual disclosure required pursuant to s. 628.8015 shall, in
 330 addition to other penalties prescribed under the Florida
 331 Insurance Code, be subject to pay a penalty of \$100 for each
 332 day's delay, not to exceed a total of \$10,000.

333 (4) If the office determines that any person violated s.
 334 628.461, ~~or~~ s. 628.801, or s. 628.8015, the violation may serve
 335 as an independent basis for disapproving dividends or
 336 distributions and for placing the insurer under an order of
 337 supervision in accordance with part VI of chapter 624.

338 Section 3. This act shall take effect October 1, 2016, if
 339 SB 1416 or similar legislation is adopted in the same
 340 legislative session or an extension thereof and becomes a law.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

1422

Bill Number (if applicable)

Topic ORSA

Amendment Barcode (if applicable)

Name Caitlin Murray

Job Title Director of Government Affairs

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Office of Insurance Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 26, 2016

I respectfully request that **Senate Bill 1422**, relating to Insurer Regulatory Reporting, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 10

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: SB 1428

INTRODUCER: Senator Simmons

SUBJECT: State Investments

DATE: February 10, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Favorable
2.	Loe	DeLoach	AGG	Recommend: Favorable
3.			AP	

I. Summary:

SB 1428 encourages the State Board of Administration (SBA) to take actions in support of the MacBride Principles in Northern Ireland. The MacBride Principles define the objectives for companies operating in Northern Ireland to provide fair employment opportunities to individuals from underrepresented religious groups in the workforce.

Specifically, the bill encourages the State Board of Administration (SBA) to determine which publicly traded companies that the Florida Retirement System Trust Fund has invested in operate in Northern Ireland. For those companies identified, the SBA is encouraged to:

- Notify the company that the SBA supports the MacBride Principles;
- Inquire regarding actions taken by the company in support of the MacBride Principles;
- Encourage a company that has not adopted the MacBride Principles to make all lawful efforts to implement similar fair employment practices; and
- Support the adoption of the MacBride Principles in exercising its proxy voting authority.

The bill provides that the SBA is not liable for, and a cause of action does not arise from, any action or inaction by the SBA in the administration of these provisions.

The SBA estimates that the costs for implementation should be minimal and covered within the existing management fee assessed on the FRS Trust Fund.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

State Board of Administration

The State Board of Administration (SBA) is created in Article IV, section 4(e) of the State Constitution. The Governor, the Chief Financial Officer, and the Attorney General serve as the trustees of the SBA. The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution. The SBA provides a variety of investment services to various governmental entities at both the state and local government levels.

The SBA has responsibility to invest the funds of the Florida Retirement System (FRS) Trust Fund which holds the assets of the FRS Pension Plan and the FRS Investment Plan. The FRS is the primary retirement system for employees of the state, universities, state colleges, school boards, counties, and various other local governments in Florida. The table below shows the primary funds the SBA invests and the balances of those funds as of January 26, 2016.¹

All SBA Funds - Estimated Market Values As of January 26, 2016 Market Close	
Fund Name	Estimated Current Value
Florida Retirement System Pension Plan	\$136,093,884,390
Florida PRIME	\$8,904,562,611
Florida Retirement System Investment Plan	\$7,917,531,799
Lawton Chiles Endowment Fund	\$568,432,757
Other SBA Mandates	\$16,884,963,473
Total	\$170,369,375,029

In investing assets, the SBA is statutorily directed to follow the fiduciary standards of care set forth in the Employee Retirement Income Security Act (ERISA), subject to certain limitations.² Pursuant to section 215.444, F.S., a nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures. The SBA’s ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a “legal list” of the types of investments and the percent of the total fund that may be invested in each investment type.

Previous Restrictions on Investments in Northern Ireland

In the 2015 Legislative Session, section 121.153, F.S., relating to restrictions on investments in institutions doing business in or with Northern Ireland, was repealed.³ Section 121.153, F.S., was enacted by the Florida Legislature in 1988, and had required the SBA to determine the existence of nine types of affirmative action taken to eliminate the ethnic or religious discrimination practiced by the government of Northern Ireland, or with agencies or instrumentalities thereof.

These affirmative actions, known as the MacBride Principles,⁴ included:

¹ State Board of Administration “Daily Estimate Report” as of January 26, 2016, issued January 27, 2016.

² Sections 215.44 and 215.47, F.S.

³ Chapter 2015-75, Laws of Fla.

⁴ Neil J. Conway, *Investment Responsibility in Northern Ireland: The MacBride Principles of Fair Employment*, 24 Loy. L.A. Int’l & Comp. L. Rev 1 (Jan. 2002).

- Increasing the representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs;
- Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work;
- Banning provocative religious or political emblems from the workplace;
- Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups;
- Providing that layoff, recall, and termination procedures should not in practice favor particular religious groupings;
- Abolishing job reservations, apprenticeship restrictions, and differential employment criteria which discriminate on the basis of religion or ethnic origin;
- Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees;
- Establishing procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and
- Appointing senior management staff members to oversee affirmative action efforts and setting up timetables to carry out affirmative action principles.

III. Effect of Proposed Changes:

Section 1 defines the term “MacBride Principles” as the objectives for companies operating in Northern Ireland to:

- Increase the representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs.
- Provide adequate security for the protection of minority employees both at the workplace and while traveling to and from work.
- Ban provocative religious or political emblems from the workplace.
- Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups.
- Provide that layoff, recall, and termination procedures should not in practice favor particular religious groups.
- Abolish job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin.
- Develop training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees.
- Establish procedures to assess, identify, and actively recruit minority employees with potential for further advancement.
- Appoint senior management staff members to oversee affirmative action efforts and to set up timetables to carry out affirmative action principles.

The term “operating” is defined as actively engaging in commerce geographically in Northern Ireland through the acquisition, development, maintenance, ownership, sale, possession, lease, or operation of equipment, facilities, personnel, products, services, or personal property.

The term “publicly traded company” is defined as any business organization having equity securities listed on a national or an international exchange that is regulated by a national or an international regulatory authority.

The term “state board” is defined as the State Board of Administration.

The bill encourages the SBA to determine which publicly traded companies in which the Florida Retirement System Trust Fund is invested operate in Northern Ireland and is further encouraged to:

- Notify the publicly traded company that the state board supports the MacBride Principles;
- Inquire regarding the actions that the publicly traded company has taken in support of or furtherance of the MacBride Principles;
- Encourage a publicly traded company that has not adopted the MacBride Principles to make all lawful efforts to implement the fair employment practices embodied in the MacBride Principles; and
- Support the adoption of the MacBride Principles in exercising its proxy voting authority. For these purposes, the state board may not be a fiduciary under this section in exercising its proxy voting authority.

Also, the bill allows the SBA to utilize various sources of public information, including information provided by nonprofit organizations, research firms, international organizations, and government entities, to make the determinations.

Additionally, the bill provides that the SBA may not be held liable for, and no cause of action may arise from, any action or inaction by the SBA in administering these provisions.

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The SBA estimates that the cost for implementation should be minimal and covered within the existing management fee assessed on the FRS Trust Fund. Research services will need to be procured to determine which SBA investments in publicly traded companies have operations in or with Northern Ireland. The SBA will be required to dedicate staff time to complete the encouraged actions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 215.4702 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Simmons

10-01338-16

20161428__

A bill to be entitled

An act relating to state investments; creating s. 215.4702, F.S.; defining terms; encouraging the State Board of Administration to determine which publicly traded companies in which the Florida Retirement System Trust Fund is invested operate in Northern Ireland; encouraging the state board to take certain action upon making a determination; authorizing the state board to rely on public information in making a determination; providing that the state board is not liable or subject to a cause of action under the act; providing an effective date.

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

Section 1. Section 215.4702, Florida Statutes, is created to read:

215.4702 Investments in publicly traded companies operating in Northern Ireland.—

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

(a) "MacBride Principles" means the objectives for companies operating in Northern Ireland to:

1. Increase the representation of individuals from underrepresented religious groups in the workforce, including managerial, supervisory, administrative, clerical, and technical jobs.

2. Provide adequate security for the protection of minority employees both at the workplace and while traveling to and from work.

3. Ban provocative religious or political emblems from the workplace.

4. Publicly advertise all job openings and make special

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recruitment efforts to attract applicants from underrepresented religious groups.

5. Provide that layoff, recall, and termination procedures should not in practice favor particular religious groups.

6. Abolish job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin.

7. Develop training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees.

8. Establish procedures to assess, identify, and actively recruit minority employees with potential for further advancement.

9. Appoint senior management staff members to oversee affirmative action efforts and to set up timetables to carry out affirmative action principles.

(b) "Operating" means actively engaging in commerce geographically in Northern Ireland through the acquisition, development, maintenance, ownership, sale, possession, lease, or operation of equipment, facilities, personnel, products, services, or personal property.

(c) "Publicly traded company" means any business organization having equity securities listed on a national or an international exchange that is regulated by a national or an international regulatory authority.

(d) "State board" means the State Board of Administration.

(2) The state board is encouraged to determine which

Page 2 of 3

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

10-01338-16

20161428__

62 publicly traded companies in which the Florida Retirement System
63 Trust Fund is invested operate in Northern Ireland. If the state
64 board determines that a publicly traded company meets such
65 criteria, the state board is encouraged to:

66 (a) Notify the publicly traded company that the state board
67 supports the MacBride Principles;

68 (b) Inquire regarding the actions that the publicly traded
69 company has taken in support of or furtherance of the MacBride
70 Principles;

71 (c) Encourage a publicly traded company that has not
72 adopted the MacBride Principles to make all lawful efforts to
73 implement the fair employment practices embodied in the MacBride
74 Principles; and

75 (d) Support the adoption of the MacBride Principles in
76 exercising its proxy voting authority. For these purposes, the
77 state board may not be a fiduciary under this section in
78 exercising its proxy voting authority.

79 (3) In making the determination specified in subsection
80 (2), the state board may, to the extent it deems appropriate,
81 rely on available public information, including information
82 provided by nonprofit organizations, research firms,
83 international organizations, and government entities.

84 (4) The state board may not be held liable for, and a cause
85 of action does not arise from, any action or inaction by the
86 state board in the administration of this section.

87 Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SB 1428

Bill Number (if applicable)

Topic STATE INVESTMENTS

Amendment Barcode (if applicable)

Name JOHN KUCZWANSKI

Job Title STATE BOARD OF ADMINISTRATION

Address 1801 HERMITAGE BLVD

Phone (850) 413-1254

Street

TALLAHASSEE FL 32308

Email John.Kuczowski@SBARF.A.COM

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

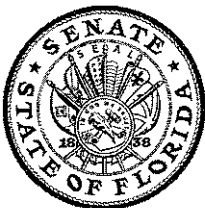
Representing STATE BOARD OF ADMINISTRATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



The Florida Senate

Committee Agenda Request

To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: February 2, 2016

I respectfully request that **Senate Bill 1428**, relating to State Investments, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 10

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: SB 1488

INTRODUCER: Senator Montford

SUBJECT: Aerial Photographs and Nonproperty Ownership Maps

DATE: February 10, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1488 revises the county population thresholds for purposes of identifying the governmental entity responsible for payment of aerial photographs and nonproperty ownership maps. All photographs and maps furnished to a county that meets the population thresholds of a rural community in s. 288.0656(2)(e), F.S., shall be paid for by the Florida Department of Revenue.

The bill has a significant impact on state funds.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Aerial Photography and Nonproperty Ownership Maps

The Florida Department of Revenue (department) coordinates the capture and distribution of orthoimagery^{1,2} of approximately one third of the state each year, according to the provisions of s. 195.022, F.S. Once every three years, the department must furnish aerial photographs and nonproperty ownership maps to the property appraisers as necessary to ensure that all real property within the state is listed on the roll.³ The three-year rotation breaks down as such:

- In the 2014-2015 mapping year, the following 15 counties were photographed: Volusia, Seminole, Orange, Brevard, Indian River, Okeechobee, St. Lucie, Martin, Glades, Palm Beach, Lee, Broward, Collier, Miami-Dade, and Monroe.

¹ Orthoimagery data are typically high resolution aerial images that combine the visual attributes of an aerial photograph with the spatial accuracy of a planimetric map; see United States Geological Survey, *The National Map*, <http://nationalmap.gov/ortho.html> (last visited January 28, 2016).

² The accepted industry standard is 6 inch resolution photography; see Department of Revenue, *Senate Bill 1488 Legislative Bill Analysis* (January 21, 2016) (on file with the Senate Committee on Community Affairs).

³ Florida Department of Revenue, *GIS/Mapping*, <http://dor.myflorida.com/dor/property/gis/> (last visited January 28, 2016).

- In 2015-2016, the following 27 counties were or will be photographed: Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Leon, Wakulla, Jefferson, Madison, Taylor, Hamilton, Lafayette, Suwannee, Dixie, Levy, Gilchrist, Columbia, Union, and Bradford.
- In 2016-2017, the 25 following counties will be photographed: Nassau, Baker, Duval, Clay, St. Johns, Putnam, Flagler, Alachua, Marion, Citrus, Sumter, Lake, Hernando, Pasco, Pinellas, Hillsborough, Polk, Osceola, Manatee, Hardee, Highlands, Sarasota, DeSoto, Charlotte, and Hendry.
- This rotation cycle continues, with 15 counties, 27 counties, and 25 counties as the groupings.⁴

Before 2008, the department provided aerial photography without charge or expense to property appraisers.⁵ In 2008, these costs were shifted to the county property appraisers, except in counties with a population of less than 25,000.⁶ However, between 2009 and 2015, funding for aerial photography in counties with a population less than 50,000 was provided via specific proviso language included in the General Appropriations Act each fiscal year.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 195.022, F.S., revising the county population thresholds for purposes of identifying the governmental entity responsible for payment of aerial photographs and nonproperty ownership maps. All photographs and maps furnished to a county that meets the population thresholds of a rural community in s. 288.0656(2)(e), F.S., shall be paid for by the department. In counties not meeting those thresholds, the property appraisers bear the expense.

A rural community is defined in s. 288.0656(2)(e), F.S., as:

- A county with a population of 75,000 or fewer;
- A county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer;
- A municipality within a county described above; or
- An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in s. 288.0656(2)(c), F.S., and verified by the department.

The following counties are within the definition of a rural community: Liberty, Lafayette, Franklin, Union, Glades, Hamilton, Calhoun, Gulf, Jefferson, Dixie, Gilchrist, Madison, Holmes, Taylor, Washington, Bradford, Baker, Hardee, Wakulla, DeSoto, Okeechobee, Hendry, Levy,

⁴ Florida Department of Revenue, *3 Year Aerial Photography Schedule*, available at http://dor.myflorida.com/dor/property/gis/pdf/flight_plan.pdf (last visited January 28, 2016).

⁵ Section 195.022, F.S. (2007).

⁶ Chapter 2008-138, s. 2, Laws of Fla. (amending 195.022, F.S., effective July 1, 2008).

⁷ See Chapter 2012-118, s. 6, Laws of Fla. (effective July 1, 2012).

Suwannee, Jackson, Gadsden, Walton, Columbia, Putnam, Monroe, Nassau, Highlands, and Flagler.⁸

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 1488 provides a positive fiscal impact to counties that fall into the new population thresholds and a negative fiscal impact to the state.

The Department of Revenue estimates that by including the additional counties, the following amount would be needed from the General Revenue Fund:

	FY 2016-17	FY 2017-18	FY 2018-19
Aerial Photography and Maps ⁹	\$545,727	\$236,886	\$1,346,921

SB 2500, the Senate’s proposed 2016-2017 General Appropriations Bill, provides \$258,720 in nonrecurring funds from the General Revenue Fund for aerial photography and mapping for counties with a population of 50,000 or less.

⁸ Office of Economic and Demographic Research, Population and Demographic Data, Florida Estimates of Population available at <http://edr.state.fl.us/Content/population-demographics/data/PopulationEstimates2015.pdf> (last visited January 29, 2016). All counties listed fall into the “rural community” definition under both the official 2010 Census population and the 2015 estimate.

⁹ Department of Revenue, *Senate Bill 1488 Legislative Bill Analysis* (February 8, 2016) (on file with the Appropriations Subcommittee on General Government).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 195.022 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Montford

3-01267-16

20161488__

A bill to be entitled

An act relating to aerial photographs and nonproperty ownership maps; amending s. 195.022, F.S.; revising the county population thresholds for purposes of identifying the governmental entity responsible for payment of aerial photographs and nonproperty ownership maps; providing an effective date.

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

Section 1. Section 195.022, Florida Statutes, is amended to read:

195.022 Forms to be prescribed by Department of Revenue.— The Department of Revenue shall prescribe all forms to be used by property appraisers, tax collectors, clerks of the circuit court, and value adjustment boards in administering and collecting ad valorem taxes. The department shall prescribe a form for each purpose. The county officer shall reproduce forms for distribution at the expense of his or her office. A county officer may use a form other than the form prescribed by the department upon obtaining written permission from the executive director of the department; however, a county officer may not use a form if the substantive content of the form varies from the form prescribed by the department for the same or a similar purpose. If the executive director finds good cause to grant such permission he or she may do so. The county officer may continue to use the approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director. Otherwise, all such officers and their employees shall use the forms, and follow the instructions applicable to the forms, which are prescribed by the department. Upon request of any property

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

3-01267-16

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appraiser or, in any event, at least once every 3 years, the department shall prescribe and furnish such aerial photographs and nonproperty ownership maps to the property appraisers as necessary to ensure that all real property within the state is properly listed on the roll. All photographs and maps furnished to a county that meets the population thresholds of a rural community in s. 288.0656(2)(e) ~~counties with a population of 25,000 or fewer~~ shall be paid for by the department as provided by law. For a county that does not meet those population thresholds ~~counties with a population greater than 25,000~~, the department shall furnish such items at the property appraiser's expense. The department may incur reasonable expenses for procuring aerial photographs and nonproperty ownership maps and may charge a fee to the respective property appraiser equal to the cost incurred. The department shall deposit such fees into the Certification Program Trust Fund created pursuant to s. 195.002. There shall be a separate account in the trust fund for the aid and assistance activity of providing aerial photographs and nonproperty ownership maps to property appraisers. The department shall use money in the fund to pay such expenses. All forms and maps and instructions relating to their use must be substantially uniform throughout the state. An officer may employ supplemental forms and maps, at the expense of his or her office, which he or she deems expedient for the purpose of administering and collecting ad valorem taxes. The forms required in ss. 193.461(3)(a) and 196.011(1) for renewal purposes must require sufficient information for the property appraiser to evaluate the changes in use since the prior year. If the property appraiser determines, in the case of a taxpayer,

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62 that he or she has insufficient current information upon which
63 to approve the exemption, or if the information on the renewal
64 form is inadequate for him or her to evaluate the taxable status
65 of the property, he or she may require the resubmission of an
66 original application.

67 Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

1488

Bill Number (if applicable)

Topic Aerial Photography

Amendment Barcode (if applicable)

Name Loren Levy

Job Title General Counsel, Property Appraisers' Ass'n of Florida

Address 1828 Riggins Rd

Phone 850-219-0220

Street

Tallahassee

City

FL

State

32308

Zip

Email pa@fla.comcast.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Reapportionment
Rules

SENATOR BILL MONTFORD

3rd District

February 1, 2016

Senator Alan Hays, Chair
Senate Appropriations Subcommittee
On General Government
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays:

I respectfully request that SB 1488 be scheduled for a hearing before the Senate Appropriations Subcommittee on General Committee. Senate Bill 1488 would restore funding for aerial photography for counties in rural communities.

Your assistance and favorable consideration of my request is greatly appreciated

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

cc: Jamie DeLoach, Staff Director

BJM/mam

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: CS/SB 1538

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Evers

SUBJECT: Veterans Employment

DATE: February 10, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ryon</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1538 requires each state agency and authorizes the political subdivisions of the state to develop and implement a written veterans recruitment plan to establish annual goals for ensuring the full use of veterans in the agency's or political subdivision's workforce.

The bill requires the Department of Management Services (DMS) to annually collect and publish on its website and include in its annual workforce report statistical data for each state agency on the following:

- The number of persons who claim veterans' preference;
- The number of persons who are hired through the veterans' preference; and
- The number of persons who are hired as a result of the veterans' recruitment plan.

The bill requires each veterans' recruitment plan to apply to the same veterans and veterans' family members that are addressed in the Florida law governing veterans' preference in appointment and retention.

This bill has an indeterminate fiscal impact to the state. See Section V.

The effective date of the bill is October 1, 2016.

II. Present Situation:

Veteran Presence in Florida

The law defines the term “veteran” as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions, or who later received an upgraded discharge under honorable conditions.¹ Currently, there are 21.8 million veterans in the United States, of which, over 1.6 million reside in Florida.² This makes Florida the state with the third largest veteran population, behind only California and Texas.³ Approximately 299,000 of Florida’s veterans are service-disabled.⁴

Florida’s overall unemployment rate for calendar year 2014 was 6.3 percent.⁵ The unemployment rate among Florida veterans was five percent compared to 5.3 percent nationally.⁶ The unemployment rate among Florida Post-9/11 era veterans averaged 4.8 percent compared to 7.2 percent nationally.⁷

Veterans’ Preference in Employment

Florida law has included some form of veterans’ employment preference since 1947.⁸ The purpose of the veterans’ preference statute is to reward those who served their country in a time of need and to recognize the qualities and traits developed by military service.⁹ In 2014, the Legislature expanded Florida’s veterans’ preference in the public employment process to increase the field of persons eligible for veterans’ preference to include all veterans, Florida National Guard members, reservists, and Gold Star parents and legal guardians.¹⁰ In addition, beginning in 2014, private sector employers in Florida were authorized to establish a veterans’ preference process for honorably discharged veterans and certain spouses.¹¹

Currently, Florida law does not provide a policy for state agencies concerning the recruitment of employees who are veterans. However, the law specifically requires all state government entities, counties, cities, towns, villages, special tax school districts, and special districts (government employers) to grant employment preference in hiring and retention to certain veterans, and

¹ Section 1.01(14), F.S.

² U.S. Census Bureau, *A Snapshot of Our Nation’s Veterans*, available at: <http://www.census.gov/library/infographics/veterans.html>

³ Florida Department of Veterans’ Affairs, *Fast Facts*, available at: http://floridavets.org/?page_id=50

⁴ U.S. Department of Veterans Affairs, Veterans Benefits Administration, Annual Benefits Report, Fiscal Year 2014, page 22 of 80, available at: <http://www.benefits.va.gov/REPORTS/abr/ABR-IntroAppendix-FY13-09262014.pdf>

⁵ See Florida Department of Economic Opportunity, *Local Area Unemployment Statistics*, available at: <http://www.floridajobs.org/labor-market-information/data-center/statistical-programs/local-area-unemployment-statistics>

⁶ United States Congress Joint Economic Committee, *Economic Snapshot: Florida* (Oct. 2015), available at: http://www.jec.senate.gov/public/_cache/files/2cb3bde9-27db-4584-86fc-f2ce46e4bb2e/florida.pdf

⁷ Id.

⁸ Section 1, ch. 24201, L.O.F. (1947).

⁹ *Yates v. Rezeau*, 62 So.2d 726, 727 (Fla. 1952); Ch. 98-33, at 244, L.O.F.

¹⁰ ch. 2014-1, L.O.F.

¹¹ Section 295.188, F.S.

family members of certain military servicemembers and veterans.¹² All advertisements and written job announcements must include notice that veterans and eligible family members receive preference in employment and are encouraged to apply for the position.¹³

Florida's veterans' preference in employment statutes does not require a government employer to hire a veteran over a more qualified non-veteran.¹⁴ In addition, a potential government employer is not required to pass a person who is eligible for veterans' preference through the screening process if he or she does not meet the minimum qualifications for the position.¹⁵

Persons Eligible for Veterans' Preference and Exceptions

Pursuant to s. 295.07, F.S., the following persons are eligible to claim veterans' employment preference:¹⁶

- A disabled veteran who has served on active duty in any branch of the Armed Forces and who presently has an existing service-connected disability which is compensable under public laws administered by the United States Department of Veterans Affairs (DVA) or is receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the DVA and the United States Department of Defense.
- The spouse of a veteran:
 - Who has a total and permanent service-connected disability and who, because of this disability, cannot qualify for employment; or
 - Who is missing in action, captured in line of duty by a hostile force, or detained or interned in line of duty by a foreign government or power.
- A veteran of any war, who has served at least one day during that war time period as defined in subsection s. 1.01(14), F.S., or who has been awarded a campaign or expeditionary medal. (Active duty for training is not allowed for eligibility under this provision.)
- The unremarried widow or widower of a veteran who died of a service-connected disability.
- The mother, father, legal guardian, or unremarried widow or widower of a service member who died as a result of military service under combat-related conditions.
- A veteran as defined in s. 1.01(14), F.S.
- A current member of any reserve component of the U.S. Armed Forces or the Florida National Guard.

Florida law exempts the following government positions from the veterans' preference requirements:¹⁷

- Positions that are exempt from the state Career Service System, including certain legislative branch personnel, judicial branch personnel, and personnel of the Office of the Governor; however, all positions under the University Support Personnel System of the State University

¹² Section 295.07(1), F.S., requires the state and political subdivisions of the state to comply with veterans' preference requirements. Section 1.01, F.S., defines "political subdivision" as "counties, cities, towns, villages, special tax school districts, special road and bridge districts, and all other districts in the state."

¹³ Section 295.065, F.S.

¹⁴ Harris v. State, Public Employees Relations Com'n., 568 So.2d 475 (Fla. 1st DCA 1990).

¹⁵ *Id.*

¹⁶ Section 295.07(1)(a)-(g), F.S.

¹⁷ Section 295.07(4)(a)-(b), F.S.

System as well as all Career Service System positions under the Florida College System and the School for the Deaf and the Blind are included;

- Positions in political subdivisions of the state which are filled by officers elected by popular vote or persons appointed to fill vacancies in such offices and the personal secretary of each officer;
- Members of boards and commissions;
- Persons employed on a temporary basis without benefits;
- Heads of departments;
- Positions that require licensure as a physician, licensure as an osteopathic physician, or licensure as a chiropractic physician; and
- Positions that require membership in the Florida Bar.

Veterans’ Preference Applied when Examination Determines Qualification for Employment

If an examination is used to determine qualification for employment, points are added to the final examination score as follows:¹⁸

Veterans’ Preference Beneficiary	Preference Points
Disabled Veteran	15
Spouse of Person With Total Disability, Missing in Action, Captured in Line of Duty, Etc.	15
Wartime Veteran	10
Un-remarried widow/widower of Person Who Died of a Service-Connected Disability	10
Gold Star Family	10
Veteran	5
National Guard/Reserve	5

In order for points to be awarded, the applicant must first obtain a qualifying score on the examination.¹⁹

Florida law requires each government employer to enter the names of persons eligible for preference on an appropriate register or list in accordance with their respective ratings.²⁰ For most positions, the names of all persons qualified to receive a fifteen-point preference whose service-connected disabilities have been rated to be 30 percent or more must be placed at the top of the appropriate register or employment list, in accordance with their respective ratings.²¹ A Florida court determined that this provision gives an absolute preference for veterans to be placed at the top of the employment list only if the candidate has a 30 percent or more disability rating.²²

¹⁸ Section 295.08, F.S.

¹⁹ Rule 55A-7.010(1), F.A.C.

²⁰ Section 295.08, F.S.

²¹ Id.

²² Harris v. State, Public Employees Relations Com'n., 568 So.2d 475 (Fla. 1st DCA 1990).

However, the court further declared that there are no statutory provisions suggesting that veterans receiving a five or ten point exam score augmentation must be hired over more qualified non-veterans.²³

Veterans' Preference Applied when Examination Does Not Determine Qualification for Employment

If an examination is not used to determine qualifications for a position, preference is given as follows:²⁴

- First preference is given to disabled veterans and the spouses of veterans who have a total and permanent service-connected disability or who are missing in action, captured in line of duty by a hostile force, or detained or interned in line of duty by a foreign government or power; and
- Second preference is given to a veteran of any war; the unremarried widow or widower of a veteran who died of a service connected disability; the mother, father, legal guardian, or unremarried widow or widower of a service member who died as a result of military service under combat-related conditions; a veteran as defined in section s. 1.01(14), F.S., and a current member of any reserve component of the U.S. Armed Forces or the Florida National Guard.

State Government Veterans' Preference Provision

With respect to non-exempt positions in the state's career service system, Florida law requires the state to grant a preference in hiring and retention to an eligible person if the eligible person meets the minimum eligibility requirements for the position and has the knowledge, skills, and abilities required for the position.²⁵ A disabled veteran employed as the result of being placed at the top of the appropriate employment list must be appointed for a probationary period of one year.²⁶ At the end of one year, if the disabled veteran's performance is satisfactory, the veteran will acquire permanent employment status and will be subject to the employment rules of the DMS and the veteran's employing agency.²⁷

State Equal Employment Policy

Section 110.112, F.S., declares that the policy of the state is to afford equal employment opportunities through programs of affirmative and positive action allowing for the full utilization of women and minorities. Each executive agency is required to develop and implement an affirmative action plan; ²⁸ establish annual goals in its affirmative action plan for ensuring full

²³ Id.

²⁴ Section 295.085, F.S.

²⁵ Section 110.2135(1), F.S.

²⁶ Section 110.2135(2), F.S.

²⁷ Id.

²⁸ Section 110.112(2)(a), F.S.

utilization of groups underrepresented in the agency's workforce as compared to the relevant labor market;²⁹ and appoint an affirmative action-equal employment opportunity officer.³⁰

Section 110.201(5), F.S., requires the DMS to develop an annual workforce report that contains data representative of the state's human resources.³¹ The DMS is also required to include in its annual workforce report information relating to each executive agency's affirmative action plan.³²

III. Effect of Proposed Changes:

CS/SB 1538 amends s. 295.07, F.S., to require each state agency and authorize political subdivisions of the state to develop and implement a written veterans' recruitment plan to establish annual goals for ensuring the full use of veterans in the agency's or political subdivision's workforce. These veterans' recruitment plans apply to veterans and their family members who are eligible for veterans' employment preference identified in s. 295.07(1), F.S.

The bill requires the DMS to annually collect and publish on its website and include in its annual workforce report statistical data for each state agency on the following:

- The number of persons who claim veterans' preference;
- The number of persons who are hired through the veterans' preference; and
- The number of persons who are hired as a result of the veterans' recruitment plan.

The bill also updates cross references in ss. 295.085 and 295.09, F.S.

The bill takes effect on October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁹ Section 110.112(2)(b), F.S.

³⁰ Section 110.112(2)(c), F.S., provides that the duties of the affirmative action-equal employment opportunity officer include "determining annual goals, monitoring agency compliance, and providing consultation to managers regarding progress, deficiencies, and appropriate corrective action."

³¹ DMS State Personnel Annual Workforce Report Fiscal Year 2013-2014, Equal Employment Opportunity/Affirmative Action Report page 62, available at: <http://www.dms.myflorida.com/content/download/113500/629140/file/FY%2013-14%20Annual%20Workforce%20Report.pdf>.

³² Section 110.112(2)(d), (e), and (6), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

CS/SB 1538 may provide a positive fiscal impact to veterans in the state. Recruiting veterans to the state's government workforce will likely increase the number of veterans that obtain gainful employment.

C. Government Sector Impact:

The bill has an indeterminate negative fiscal impact to the state and local governments. The cost for state agencies to develop and implement a veterans' recruitment plan is unknown but most likely insignificant and may be handled within existing resources.

The fiscal impact to the DMS is indeterminate. The cost for the DMS to collect the required statistical data for all state agencies, annually update the data on its website, and include the data in its annual workforce report is unknown, but may be insignificant. In addition, the DMS states the bill may require People First programming modifications in order to capture the specified data.³³ These additional costs could be handled within existing resources or requested in the agency's legislative budget request.

Allowing each political subdivision of the state to develop and implement a written veterans' recruitment plan may create an indeterminate negative fiscal impact to these political subdivisions. However, this is an authorization for the political subdivisions to do so, not a requirement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 295.07, 295.085, and 295.09.

³³ Email from Ricky Moulton, Department of Management Services, Re: CS/HB 1219, which is similar to CS/SB 1538 (Feb. 4, 2016) (on file with the Appropriations Subcommittee on General Government staff).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military and Veterans Affairs, Space, and Domestic Security on January 26, 2016:

The CS:

- Relocates the bill’s veterans recruitment plan provisions to the existing veterans preference statute (s. 295.07);
- Allows political subdivisions to develop veteran’s recruitment plans.
- Removes the requirement that each executive agency appoint a veterans employment officer;
- Removes training requirements for the DMS and executive agencies relating to recruitment and employment of veterans;
- Provides that an agency’s veterans recruitment plan will apply to veterans and their family members who are eligible for state veterans’ preference; and
- Requires the DMS to collect statistical data on the effectiveness and utilization of veterans’ preference and veteran recruitment practices.

- B. **Amendments:**

None.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Evers

583-02600-16

20161538c1

A bill to be entitled

An act relating to veterans employment; amending s. 295.07, F.S.; requiring each state agency and authorizing other political subdivisions of the state to develop and implement a veterans recruitment plan; requiring specified goals for veterans recruitment plans; requiring the Department of Management Services to collect specified data and to include the data in its annual workforce report and on its website; amending ss. 295.085 and 295.09, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsection (4) of section 295.07, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

295.07 Preference in appointment and retention.—

(4) (a) Each state agency shall, and political subdivisions of the state may, develop and implement a written veterans recruitment plan that establishes annual goals for ensuring the full use of veterans in the agency's or political subdivision's workforce. Each veterans recruitment plan must be designed to meet the established goals.

(b) The Department of Management Services shall collect statistical data for each state agency on the number of persons who claim veterans' preference, the number of persons who are hired through the veterans' preference, and the number of persons who are hired as a result of the veterans recruitment plan. The department shall annually update the statistical data on its website and include it in its annual workforce report.

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583-02600-16

20161538c1

(c) For purposes of this subsection, a veterans recruitment plan applies to veterans and their family members identified in subsection (1).

Section 2. Section 295.085, Florida Statutes, is amended to read:

295.085 Positions for which a numerically based selection process is not used.—In all positions in which the appointment or employment of persons is not subject to a written examination, with the exception of positions that are exempt under s. 295.07(5) ~~s. 295.07(4)~~, first preference in appointment, employment, and retention shall be given by the state and political subdivisions in the state to a person included under s. 295.07(1)(a) or (b), and second preference shall be given to a person included under s. 295.07(1)(c), (d), (e), (f), or (g) who possess the minimum qualifications necessary to discharge the duties of the position involved.

Section 3. Paragraph (a) of subsection (1) of section 295.09, Florida Statutes, is amended to read:

295.09 Reinstatement or reemployment; promotion preference.—

(1) (a) When an employee of the state or any of its political subdivisions employed in a position subject or not subject to a career service system or other merit-type system, with the exception of those positions which are exempt pursuant to s. 295.07(5) ~~s. 295.07(4)~~, has served in the Armed Forces of the United States and is discharged or separated therefrom with an honorable discharge, the state or its political subdivision shall reemploy or reinstate such person to the same position that he or she held prior to such service in the armed forces,

Page 2 of 3

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

583-02600-16

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61 or to an equivalent position, provided such person returns to
62 the position within 1 year of his or her date of separation or,
63 in cases of extended active duty, within 1 year of the date of
64 discharge or separation subsequent to the extension. Such person
65 shall also be awarded preference in promotion and shall be
66 promoted ahead of all others who are as well qualified or less
67 qualified for the position. When an examination for promotion is
68 utilized, such person shall be awarded preference points, as
69 provided in s. 295.08, and shall be promoted ahead of all those
70 who appear in an equal or lesser position on the promotional
71 register, provided he or she first successfully passes the
72 examination for the promotional position.

73 Section 4. This act shall take effect October 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

2/11/2016

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1538

Bill Number (if applicable)

Topic VETERANS EMPLOYMENT

Amendment Barcode (if applicable)

Name JESSICA KRAYNAK (CRAY-NACK)

Job Title LEGISLATIVE ANALYST

Address SUITE 2105, THE CAPITOL

Phone (850) 487-1533

Street

Tallahassee FL 32399

City

State

Zip

Email KRAYNAKJ2@FDVA.STATE.FL.US

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing THE FLORIDA DEPT. OF VETERANS' AFFAIRS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/11/2016

Meeting Date

1538

Bill Number (if applicable)

Topic Military and Veterans Affairs

Amendment Barcode (if applicable)

Name Antonio

Job Title Veteran

Address 2313 NW 6th Court
Street

Phone _____

FT Lauderdale FL 33311
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Hays
Chair, Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

January 26, 2016

Dear Senator Hays,

I respectfully request that **Senate Bill 1538**, regarding **Veterans Employment**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

C

A handwritten signature in cursive script that reads "Greg Evers".

Senator Greg Evers
Florida Senate, District 2

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: PCS/CS/SB 1604 (141410)

INTRODUCER: Appropriations Subcommittee on General Government; Health Policy Committee; and Senator Grimsley

SUBJECT: Drugs, Devices, and Cosmetics

DATE: February 15, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stovall</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1604 updates the Florida Drug and Cosmetic Act (Act) to bring it into conformity with the federal Food, Drug and Cosmetic Act (federal act). Recent amendments to the federal act preempted Florida's regulatory structure. The bill replaces provisions relating to pedigree papers with federal requirements for a transaction history, transaction information, or transaction statement for certain recordkeeping for the manufacture and distribution of prescription drugs. Certain activities are exempted from the definition of wholesale distribution in order to conform regulatory oversight in Florida to the federal regulatory scheme.

The bill provides for administrative efficiencies and cost savings for:

- Initial and renewal permitting for prescription drug wholesale distributors and out-of-state prescription drug wholesale distributors by eliminating the distinction between primary and secondary wholesalers and the supplemental information required of a secondary wholesaler for permitting;
- Allowing certain key personnel to submit an affidavit that information submitted on a previous personal statement remains unchanged;
- Modifying the requirement for a surety bond; and
- Authorizing the Department of Business and Professional Regulation (DBPR) to contract with a vendor or enter into interagency agreements for electronic fingerprinting.

The bill establishes a nonresident prescription drug repackager permit, along with the requirement to obtain such a permit if a repackager located outside the state distributes its repackaged prescription drugs into the state. This repackager is also required to comply with provisions applicable to prescription drug manufacturers. The DBPR must establish a virtual prescription drug manufacturer permit and a virtual out-of-state prescription drug manufacturer permit for manufacturers that do not physically manufacture and possess their prescription drugs.

The DBPR is also authorized to issue non-disciplinary citations for violations of the Act for which there is no substantial threat to the public health, safety, or welfare.

The bill has an indeterminate, but most likely insignificant, fiscal impact on state funds.

This bill is effective July 1, 2016.

II. Present Situation:

The Florida Drug and Cosmetic Act (Act) is found in ch. 499, F.S. The purpose of the Act is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The DBPR is responsible for regulating and enforcing the Act and is specifically charged with administering and enforcing the Act to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.¹

In 2003, the Legislature enacted the Prescription Drug Protection Act,² which put in place strong safeguards for the distribution of prescription drugs in, into, and from this state. This legislation was predicated on the findings and recommendations of the report of the Seventeenth Statewide Grand Jury in its First Interim Report to the Legislature.³ That grand jury was called to examine, among other matters, the safety of prescription drugs in Florida. In particular, they examined the situation concerning the sale and re-sale of prescription drugs in the wholesale market.

The Prescription Drug Protection Act required prescription drug wholesalers to provide pedigree papers (a transaction history for tracing a prescription drug through the market) for the wholesale distribution of prescription drugs, strengthened permitting requirements for prescription drug wholesale distributors, especially for wholesale distributors that did not purchase directly from drug manufacturers (referred to as secondary wholesalers), and established significant criminal penalties for prescription drug violations related to counterfeiting and diversion.

In 2013, the Drug Quality and Security Act (DQSA) amended the federal act. The DQSA established a uniform national policy for product tracing and other requirements relating to the prescription drug supply chain. The DQSA expressly preempted states from establishing or continuing in effect any requirements for tracing products through the distribution system which are inconsistent with, more stringent than, or in addition to, any requirement applicable under DQSA. The preemption also included prohibiting states from establishing or continuing any standards, requirements, or regulations with respect to wholesale prescription drug distributor or

¹ See s 499.002, F.S.

² See ch. 2003-155, L.O.F.

³ The report is available at: <http://myfloridalegal.com/grandjury17.pdf> (last visited Jan. 24, 2016).

third-party logistics provider licensure that are inconsistent with, less stringent than, directly related to, or covered by the standards and requirements of the DQSA.⁴

III. Effect of Proposed Changes:

Section 1 amends s. 499.003, F.S., to revise definitions to conform to the changes made to the Florida Drug and Cosmetic Act in this bill. New definitions are provided for: “active pharmaceutical ingredient”⁵ and “affiliate.” The following definitions are repealed: “affiliated group,” “authenticate,” “drop shipment,” “normal distribution chain,” “pedigree paper,” “primary wholesale distributor,” and “secondary wholesale distributor.” The following definitions are substantially revised:

- “Distribute” means to sell, purchase, trade, deliver, handle, store, or receive. The term does not mean to administer or dispense. Deleted from the definition is the concept of offering to perform any of these activities and the method of distribution, i.e., by passage of title, physical movement, or both. The exemption for billing and invoicing activities is also deleted from the definition, but is addressed as an exception to the definition of wholesale distribution.
- “Manufacturer” is reworded to more accurately describe co-licensed partners and private label distributors. Third party logistics (TPL) providers are deleted from the definition.
- “Wholesale distribution” is clarified that the term includes both the distribution to a person and the receipt by a person, of a prescription drug, other than the consumer or patient. The exceptions to wholesale distribution are expanded and revised. Drug shortages not caused by a public health emergency are not deemed an emergency medical reason for the distribution of a prescription drug by a retail pharmacy. This provision is found in rule, but is now specifically addressed in statute. New exclusions from the definition of wholesale distribution include:
 - Intracompany distribution between members of an affiliate or within a manufacturer;
 - Distribution of a prescription drug by the manufacturer of that prescription drug;
 - Distribution of a prescription drug by a TPL provider in accordance with state and federal law if the TPL provider does not own the drug;
 - Distribution of, or offer to distribute, a prescription drug by an repackager that is registered under the federal act that owned or possessed the drug and which repackaged it;
 - The purchase or other acquisition by a dispenser, hospital, or other health care entity for use by that dispenser, hospital, or other health care entity;
 - Distribution of a prescription drug for the purpose of repacking the drug owned by a hospital for the hospital’s use or other health care entity that is under common control with the hospital;
 - Distribution of minimal quantities of prescription drugs by a retail pharmacy to a licensed practitioner for office use in compliance with the Florida Pharmacy Act and its rules;
 - Distribution of an intravenous prescription drug that is intended for replenishment of fluids and electrolytes, or to maintain the equilibrium of water and minerals in the body;
 - Distribution of a prescription drug that is intended for irrigation or sterile water;
 - Distribution of exempt medical convenience kits;

⁴ See sec. 585 of the Food, Drug, and Cosmetic Act.

⁵ The definition of “active pharmaceutical ingredient” is moved from within the definition of “drug.”

- Transport by a common carrier if it does not own the prescription drug;
- Saleable returns when conducted by a dispenser;
- Facilitating the distribution of a prescription drug by providing solely administrative services;
- Distribution of a specially-priced or donated prescription drug by a charitable organization to a licensed health care practitioner, health care clinic permitted pursuant to the Act, or to the Department of Health (DOH) or other governmental health care entity for providing emergency medical services, if the distributor and recipient receive no direct or indirect financial benefit other than tax benefits for charitable contributions; and
- Distribution of a medical gas in compliance with part III of the Act.
- “Wholesale distributor” means a person other than a manufacturer, a manufacturer’s co-licensed partner, a TPL provider, or a repackager, who is engaged in wholesale distribution.

Sections 2, 3, 4, and 20 amend s. 499.005, F.S., relating to prohibited acts; s. 499.0051, F.S., relating to criminal acts; s. 499.006, F.S., relating to adulterated drug or device; and s. 921.0022, F.S., relating to the criminal punishment code. The bill removes references to Florida’s pedigree requirements throughout chapter 499, F.S. In addition, the bill replaces the references to “pedigree papers” with references to “transaction history”, “transaction information”, or “transaction statement” to conform to federal requirements, the federal pre-emption of individual state regulation pertaining to certain recordkeeping for the manufacture and distribution of prescription drugs, and changes made by this bill.

Section 5 amends s. 499.01, F.S., relating to permits to:

- Add a nonresident prescription drug repackager permit. This permit is required for any person located outside Florida but within the United States or its territories that repackages prescription drugs and distributes them into Florida. This permittee is required to comply with all provisions and rules that are applicable to prescription drug manufacturers and must be registered as a drug establishment with the federal Food and Drug Administration (FDA).
- Require the DBPR to adopt rules for issuing a virtual prescription drug manufacturer permit and virtual nonresident prescription drug manufacturer permit to a person that manufactures prescription drugs but does not make or take physical possession of any prescription drugs, for example when a contract manufacturer is used. Because these manufacturers do not possess prescription drugs, the DBPR is authorized to exempt them by rule from certain establishment, security, and storage requirements.
- Delete the \$100,000 security bond requirement for prescription drug wholesalers and out-of-state prescription drug wholesaler; however a similar, less costly requirement is added to s. 499.012, F.S.
- Require an out-of-state prescription drug wholesaler, a TPL provider, or a nonresident prescription drug manufacturer distributing prescription drug active pharmaceutical ingredients into the state for the manufacture of an approved drug or biologic, which is not licensed by its resident state, to be licensed or registered under the federal act and for the recipient in Florida to maintain documentation of the supplier’s compliance.
- Conform requirements of various permits to the repeal of the pedigree paper requirements.
- Remove the restriction that the exemption from permitting for a nonresident prescription drug manufacturer to distribute prescription drug active pharmaceutical ingredients for research is applicable only if the distributions are in limited quantities, require that the label

of a prescription drug active pharmaceutical ingredient bear specific caution statement terminology, and require that a prescription drug manufacturer that obtains an active pharmaceutical ingredient from an exempt manufacturer maintain certain records detailing the specific clinical trials or biostudies for which the ingredient was obtained.

- Exempt a restricted prescription drug distributor that repackages and distributes a prescription drug to a not-for-profit rural hospital from compliance with current state and federal current good manufacturing practices relating to repackaging. Alternate provisions are made for the labeling of those prescription drugs.

Section 6 amends s. 499.012, F.S., relating to permit application requirements to:

- Clarify that a prescription drug manufacturer permit may be issued to the same address as a licensed nuclear pharmacy, even if the nuclear pharmacy holds a special sterile compounding permit under the Florida Pharmacy Act.
- Authorize the Department of Business and Professional Regulation (DBPR) to issue a retail pharmacy drug wholesale distributor permit to the address of a community pharmacy, even if the community pharmacy holds a special sterile compounding permit, as long as the community pharmacy is not a closed pharmacy.
- Provide that applications pending resolution of a deficiency after two years from the time the DBPR notified the applicant of the deficiency automatically expire.
- Require the DBPR to maintain trade secret information submitted in an application as trade secret.
- Authorize the issuance of four-year permits on selected permit types identified in rule.
- Authorize the DBPR to send a permit renewal notification at least 90 days before the expiration date of all permits which conspicuously notes the expiration date of the permit and that the establishment may not operate unless the permit is renewed timely. The renewal notification will eliminate the costs associated with sending the renewal application.
- For a prescription drug wholesale distributor or out-of-state prescription drug wholesale distributor permit:
 - Require a \$100 delinquent fee for a renewal application that is submitted later than 45 days prior to the permit's expiration date.
 - Substitute submission of the applicant's gross annual receipts attributable to prescription drug wholesale distribution activities for the previous tax year in lieu of more extensive information pertaining to prescription drug sales during certain intermediate timeframes and annually, purchases directly from manufacturers for renewal permits, and estimated information for new applicants.
 - Allow a surety bond issued in this state or any other state or other equivalent security such as an irrevocable letter of credit, or a deposit in a trust account or financial institution, which includes the state as a beneficiary, to satisfy the bond requirement. The amount of the surety bond is tiered based on the applicant's annual gross receipts. A bond of \$100,000 is applicable if the annual gross receipts of the applicant's previous tax year is over \$10 million, or \$25,000 if the annual gross receipts is \$10 million or less.
 - Repeal the additional information required to be submitted by secondary wholesalers (wholesalers that did not purchase directly from manufacturers) since the concept of primary wholesale distributor and secondary wholesale distributor is eliminated in this bill.

- Require proof of establishment inspection by the DBPR, the FDA, or another governmental entity. The DBPR may recognize the inspection conducted by another state if that state's laws are substantially equivalent to the laws in Florida.
- Authorize the DBPR to contract with a vendor or enter into interagency agreements to handle electronic fingerprinting.
- Streamline the renewal requirements for the submission of a personal information statement for certain key individuals by allowing submission of a certification under oath that the most recently submitted statement submitted to the DBPR remains unchanged.

Section 7 amends s. 499.01201, F.S., to make conforming changes by removing obsolete references to the pedigree statutes in ch. 499, F.S.

Section 8 amends s. 499.0121, F.S., relating to the storage and handling of prescription drugs to conform changes associated with the repeal of the pedigree paper requirements and to include standards for active pharmaceutical ingredients that apply to other prescription drugs. This section is also amended to increase the number of unit doses, from 5,000 to 7,500 unit doses, of any one controlled substance that may be ordered during a one-month period before triggering an assessment by the wholesaler as to whether the purchase of that controlled substance is reasonable.

Section 9 amends s. 499.015, F.S., relating to registration of drugs, devices, and cosmetics to synchronize the expiration date of product registrations with the expiration date of the applicable manufacturing or repacking permit.

Section 13 amends s. 499.066, F.S., relating to penalties, to authorize the DBPR to adopt rules identifying low-risk violations of the act and applicable penalties, including monetary assessments and other remedial measures, for which a non-disciplinary citation may be issued. The person to whom a citation is issued may choose, in lieu of accepting the citation, to have the matter investigated more fully and processed according to the full procedures for violations of the Act in which discipline may be imposed. The low-risk violation are ones for which there is no substantial threat to the public health, safety, or welfare.

Section 14 amends s. 499.82, F.S., relating to definitions under ch. 499, Part III, F.S., (medical gas). Specifically, s. 499.82, F.S., amends the definition of "wholesale distribution" to clarify that the exceptions to wholesale distribution listed in the federal act – including the distribution of medical gases – are not included in the exemptions to wholesale distribution in Florida as that term relates to medical gases.

Sections 10, 11, 12, 15, 17, 18 and 19 amend s. 499.03, F.S., relating to possession of prescription drugs, s. 499.05, F.S., relating to rules, s. 499.051, F.S., relating to inspections and investigations, s. 499.89, F.S., relating to recordkeeping, s. 409.9201, F.S., relating to Medicaid fraud, s. 499.067, F.S., relating to denial, suspension or revocation of permit, certification, or registration, and s. 794.075, F.S., relating to sexual predators, respectively, to conform these sections of law to changes made in the bill.

Section 16 repeals s. 499.01212, relating to pedigree papers.

Section 21 provides that the effective date of the act is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 1604 updates and conforms the regulations for the distribution of prescription drugs in or into this state and eliminates potential ambiguity between Florida's requirements and a uniform national approach. This uniformity should generate savings by regulated persons. Other changes to permit application submission requirements may streamline initial and renewal administrative paperwork, resulting in efficiencies in time and costs. Anecdotal information received from multiple wholesale distributors suggests that the annual submission of the renewal application consumes approximately 40 hours.

Cost savings associated with the reduction of information that is required to be provided in distributor permit applications and renewals could result in an estimated annual savings of \$225,379 to the industry each year and an estimated saving of \$1,105 per year per permittee.⁶

Allowing a surety bond that was obtained for licensure in another state to satisfy Florida's requirement for a surety bond for prescription drug wholesale distributors and out-of-state wholesale distributors will generate a cost saving of \$100,000 per qualifying permit. The tiered surety bond requirement may also help small businesses.

C. Government Sector Impact:

The bill provides for administrative efficiencies for the Department of Business and Professional Regulations (DBPR) in the regulation and enforcement of the Act which will

⁶ See DBPR, *Senate Bill 1604 Analysis*, p. 13, (on file with the Senate Committee on Health Policy).

generate cost savings. The DBPR will annually save \$579 in postage from changes to the process for renewal of permits.⁷ The DBPR will incur costs for technology changes in order to implement this Act; however, these costs can be absorbed within existing resources.

The bill amends ch. 499, F.S., to bring the statutes into conformity with the federal act, which has three permits not in current Florida law: nonresident repackager, virtual prescription drug manufacturer, and nonresident virtual prescription drug manufacturer. The entities that fall into these three new permits are already issued another type of permit by the DBPR. Under the bill, these permittees will be reclassified into the new permits and will not be charged a second time for the current permits. There will be no increased costs to the industry or increase in revenue to the DBPR.⁸ These three new permits will impose an initial registration fee of \$1,500 and a biennial registration fee of \$1,500.⁹ The current biennial fees for the virtual prescription drug manufacturer and the nonresident prescription drug manufacturer are \$1,500; therefore, the cost will remain the same for these entities. The current biennial fee for the nonresident repackager is \$1,600, as these entities are currently permitted as an out-of-state prescription drug wholesale distributor. The \$100 difference in this fee is negligible, as the DBPR does not believe that there is a significant number of entities to whom this would apply.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill exempts the distribution of minimal quantities of prescription drugs by a retail pharmacy for office use in compliance with the Florida Pharmacy Act and its rules from the definition of wholesale distribution. However, the requirement for a retail pharmacy drug wholesale distributor permit is still required in s. 499.01(2)(g), F.S., for a retail pharmacy that engages in the wholesale distribution of prescription drugs to practitioners of up to 30 percent of the pharmacy's total annual prescription drug purchases. It is not apparent how these two sections of law are intended to co-exist and additional legislative direction may be warranted.

Lines 1580-1589 exempt a restricted prescription drug distributor that repackages and distributes a prescription drug to a not-for-profit rural hospital from compliance with *all* current state and federal current good manufacturing practices relating to repackaging. This may be overly broad and might create unreasonable risks for persons receiving those drugs in the rural hospital. Also, this provision may be read as exempting compliance with current good manufacturing practices for all repacked and distributed prescription drugs to all health care entities if at least one of the recipients is a rural hospital.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 499.003, 499.005, 499.0051, 499.006, 499.01, 499.012, 499.01201, 499.0121, 499.015, 499.03, 499.05, 499.051, 499.066, 499.82, 499.89, 409.9201, 499.067, 794.075, and 921.0022.

This bill repeals section 499.01212 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:

The CS:

- Increases the number of unit doses, from 5,000 to 7,500 unit doses, of any one controlled substance that may be ordered during a one-month period before triggering an assessment by the wholesaler as to whether the purchase of that controlled substance is reasonable; and
- Specifies the equivalent security provided in lieu of a surety bond must include the State of Florida as a beneficiary, payable to the Professional Regulation Trust Fund within the DBPR.

CS by Health Policy on January 26, 2016:

The CS corrects a reference to a prescription drug manufacturer distributing their prescription drugs as opposed to engaging in the wholesale distribution of those drugs to comport with the federal act. The CS also reinstates the mandatory registration of cosmetic products manufactured in this state.

- B. **Amendments:**

None.



457132

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
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	.	

Appropriations Subcommittee on General Government (Altman)
recommended the following:

Senate Amendment

Delete lines 1918 - 1920
and insert:
irrevocable letter of credit, or a deposit in a trust account or
financial institution, which includes the State of Florida as a
beneficiary, payable to the Professional Regulation Trust Fund.
The purpose of the bond or other security is to



356636

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 2414 and 2415

insert:

(15) DUE DILIGENCE OF PURCHASERS.—

(b) A wholesale distributor must take reasonable measures to identify its customers, understand the normal and expected transactions conducted by those customers, and identify those transactions that are suspicious in nature. A wholesale distributor must establish internal policies and procedures for



356636

11 identifying suspicious orders and preventing suspicious
12 transactions. A wholesale distributor must assess orders for
13 ~~more~~ ~~greater~~ than 7,500 ~~5,000~~ unit doses of any one controlled
14 substance in any one month to determine whether the purchase is
15 reasonable. In making such assessments, a wholesale distributor
16 may consider the purchasing entity's clinical business needs,
17 location, and population served, in addition to other factors
18 established in the distributor's policies and procedures. A
19 wholesale distributor must report to the department any
20 regulated transaction involving an extraordinary quantity of a
21 listed chemical, an uncommon method of payment or delivery, or
22 any other circumstance that the regulated person believes may
23 indicate that the listed chemical will be used in violation of
24 the law. The wholesale distributor shall maintain records that
25 document the report submitted to the department in compliance
26 with this paragraph.

27
28 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

29 And the directory clause is amended as follows:

30 Delete lines 2346 - 2347

31 and insert:

32 Section 8. Paragraph (d) of subsection (4), subsection (6),
33 and paragraph (b) of subsection (15) of section 499.0121,
34 Florida Statutes, are amended to read:

35
36 ===== T I T L E A M E N D M E N T =====

37 And the title is amended as follows:

38 Delete line 66

39 and insert:



356636

40 ingredients; increasing the quantity of unit doses of
41 a controlled substance that may be ordered in any
42 given month by a customer without triggering a
43 requirement that a wholesale distributor perform a
44 reasonableness assessment; conforming provisions;
45 amending s.

By the Committee on Health Policy; and Senator Grimsley

588-02623-16

20161604c1

1 A bill to be entitled
 2 An act relating to drugs, devices, and cosmetics;
 3 amending s. 499.003, F.S.; providing, revising, and
 4 deleting definitions for purposes of the Florida Drug
 5 and Cosmetic Act; amending s. 499.005, F.S.; revising
 6 prohibited acts related to the distribution of
 7 prescription drugs; conforming a cross-reference;
 8 amending s. 499.0051, F.S.; prohibiting the
 9 distribution of prescription drugs without delivering
 10 a transaction history, transaction information, and
 11 transaction statement; providing penalties; deleting
 12 provisions and revising terminology related to
 13 pedigree papers, to conform to changes made by the
 14 act; amending s. 499.006, F.S.; conforming provisions;
 15 amending s. 499.01, F.S.; requiring nonresident
 16 prescription drug repackagers to obtain an operating
 17 permit; authorizing a manufacturer to engage in the
 18 wholesale distribution of prescription drugs;
 19 providing for the issuance of virtual prescription
 20 drug manufacturer permits and virtual nonresident
 21 prescription drug manufacturer permits to certain
 22 persons; providing exceptions from certain virtual
 23 manufacturer requirements; requiring a nonresident
 24 prescription drug repackager permit for certain
 25 persons; deleting surety bond requirements for
 26 prescription drug wholesale distributors; requiring
 27 that certain persons obtain an out-of-state
 28 prescription drug wholesale distributor permit
 29 requiring certain third party logistic providers to be
 30 licensed; requiring research and development labeling
 31 on certain prescription drug active pharmaceutical
 32 ingredient packaging; requiring certain manufacturers

Page 1 of 117

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

588-02623-16

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33 to create and maintain certain records; requiring
 34 certain prescription drug distributors to provide
 35 certain information to health care entities for which
 36 they repackage prescription drugs; amending s.
 37 499.012, F.S.; providing for issuance of a
 38 prescription drug manufacturer permit or retail
 39 pharmacy drug wholesale distributor permit when an
 40 applicant at the same address is a licensed nuclear
 41 pharmacy or community pharmacy; providing for the
 42 expiration of deficient permit applications; requiring
 43 trade secret information submitted by an applicant to
 44 be maintained as a trade secret; authorizing the
 45 quadrennial renewal of permits; providing for
 46 calculation of fees for such permit renewals; revising
 47 procedures and application requirements for permit
 48 renewals; providing for late renewal fees; allowing a
 49 permittee who submits a renewal application to
 50 continue operations; removing certain application
 51 requirements for renewal of a permit; requiring bonds
 52 or other surety of a specified amount; requiring proof
 53 of inspection of establishments used in wholesale
 54 distribution; authorizing the Department of Business
 55 and Professional Regulation to contract for the
 56 collection of electronic fingerprints under certain
 57 circumstances; providing information that may be
 58 submitted in lieu of certain application requirements
 59 for specified permits and certifications; removing
 60 provisions relating to annual renewal and expiration
 61 of permits; conforming cross-references; amending s.

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62 499.01201, F.S.; conforming provisions; amending s.
 63 499.0121, F.S.; revising prescription drug
 64 recordkeeping requirements; requiring inventories and
 65 records of transactions for active pharmaceutical
 66 ingredients; conforming provisions; amending s.
 67 499.015, F.S.; providing for the expiration, renewal,
 68 and issuance of certain drug, device, and cosmetic
 69 product registrations; providing for product
 70 registration fees; amending ss. 499.03, 499.05, and
 71 499.051, F.S.; conforming provisions to changes made
 72 by the act; amending s. 499.066, F.S.; authorizing the
 73 issuance of nondisciplinary citations; authorizing the
 74 department to adopt rules designating violations for
 75 which a citation may be issued; authorizing the
 76 department to recover investigative costs pursuant to
 77 the citation; specifying a time limitation for
 78 issuance of a citation; providing for service of a
 79 citation; amending s. 499.82, F.S.; revising the
 80 definition of "wholesale distribution" for purposes of
 81 medical gas requirements; amending s. 499.89, F.S.;
 82 conforming provisions; repealing s. 499.01212, F.S.,
 83 relating to pedigree papers; amending ss. 409.9201,
 84 499.067, 794.075, and 921.0022, F.S.; conforming
 85 cross-references; providing an effective date.

86
 87 Be It Enacted by the Legislature of the State of Florida:

88
 89 Section 1. Section 499.003, Florida Statutes, is amended to
 90 read:

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91 499.003 Definitions of terms used in this part.—As used in
 92 this part, the term:

93 (1) "Active pharmaceutical ingredient" includes any
 94 substance or mixture of substances intended, represented, or
 95 labeled for use in drug manufacturing that furnishes or is
 96 intended to furnish, in a finished dosage form, any
 97 pharmacological activity or other direct effect in the
 98 diagnosis, cure, mitigation, treatment, therapy, or prevention
 99 of disease in humans or other animals, or to affect the
 100 structure or any function of the body of humans or animals.

101 (2)(1) "Advertisement" means any representation
 102 disseminated in any manner or by any means, other than by
 103 labeling, for the purpose of inducing, or which is likely to
 104 induce, directly or indirectly, the purchase of drugs, devices,
 105 or cosmetics.

106 (3) "Affiliate" means a business entity that has a
 107 relationship with another business entity in which, directly or
 108 indirectly:

109 (a) The business entity controls, or has the power to
 110 control, the other business entity; or

111 (b) A third party controls, or has the power to control,
 112 both business entities.

113 ~~(2) "Affiliated group" means an affiliated group as defined~~
 114 ~~by s. 1504 of the Internal Revenue Code of 1986, as amended,~~
 115 ~~which is composed of chain drug entities, including at least 50~~
 116 ~~retail pharmacies, warehouses, or repackagers, which are members~~
 117 ~~of the same affiliated group. The affiliated group must disclose~~
 118 ~~the names of all its members to the department.~~

119 (4)(3) "Affiliated party" means:

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- 120 (a) A director, officer, trustee, partner, or committee
 121 member of a permittee or applicant or a subsidiary or service
 122 corporation of the permittee or applicant;
- 123 (b) A person who, directly or indirectly, manages,
 124 controls, or oversees the operation of a permittee or applicant,
 125 regardless of whether such person is a partner, shareholder,
 126 manager, member, officer, director, independent contractor, or
 127 employee of the permittee or applicant;
- 128 (c) A person who has filed or is required to file a
 129 personal information statement pursuant to s. 499.012(9) or is
 130 required to be identified in an application for a permit or to
 131 renew a permit pursuant to s. 499.012(8); or
- 132 (d) The five largest natural shareholders that own at least
 133 5 percent of the permittee or applicant.
- 134 (5)(4) "Applicant" means a person applying for a permit or
 135 certification under this part.
- 136 ~~(5) "Authenticate" means to affirmatively verify upon
 137 receipt of a prescription drug that each transaction listed on
 138 the pedigree paper has occurred.~~
- 139 ~~(a) A wholesale distributor is not required to open a
 140 sealed, medical convenience kit to authenticate a pedigree paper
 141 for a prescription drug contained within the kit.~~
- 142 ~~(b) Authentication of a prescription drug included in a
 143 sealed, medical convenience kit shall be limited to verifying
 144 the transaction and pedigree information received.~~
- 145 (6) "Certificate of free sale" means a document prepared by
 146 the department which certifies a drug, device, or cosmetic, that
 147 is registered with the department, as one that can be legally
 148 sold in the state.

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- 149 (7) "Chain pharmacy warehouse" means a ~~wholesale~~
 150 distributor permitted pursuant to s. 499.01 that maintains a
 151 physical location for prescription drugs that functions solely
 152 as a central warehouse to perform intracompany transfers of such
 153 drugs between members of an affiliate ~~to a member of its~~
 154 ~~affiliated group.~~
- 155 (8) "Closed pharmacy" means a pharmacy that is licensed
 156 under chapter 465 and purchases prescription drugs for use by a
 157 limited patient population and not for wholesale distribution or
 158 sale to the public. The term does not include retail pharmacies.
- 159 (9) "Color" includes black, white, and intermediate grays.
- 160 (10) "Color additive" means, with the exception of any
 161 material that has been or hereafter is exempt under the federal
 162 act, a material that:
- 163 (a) Is a dye pigment, or other substance, made by a process
 164 of synthesis or similar artifice, or extracted, isolated, or
 165 otherwise derived, with or without intermediate or final change
 166 of identity from a vegetable, animal, mineral, or other source;
 167 or
- 168 (b) When added or applied to a drug or cosmetic or to the
 169 human body, or any part thereof, is capable alone, or through
 170 reaction with other substances, of imparting color thereto.
- 171 (11) "Contraband prescription drug" means any adulterated
 172 drug, as defined in s. 499.006, any counterfeit drug, as defined
 173 in this section, and also means any prescription drug for which
 174 a transaction history, transaction information, or transaction
 175 statement ~~pedigree paper~~ does not exist, or for which the
 176 transaction history, transaction information, or transaction
 177 statement ~~pedigree paper~~ in existence has been forged,

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178 counterfeited, falsely created, or contains any altered, false,
179 or misrepresented matter.

180 (12) "Cosmetic" means an article, with the exception of
181 soap, that is:

182 (a) Intended to be rubbed, poured, sprinkled, or sprayed
183 on; introduced into; or otherwise applied to the human body or
184 any part thereof for cleansing, beautifying, promoting
185 attractiveness, or altering the appearance; or

186 (b) Intended for use as a component of any such article.

187 (13) "Counterfeit drug," "counterfeit device," or
188 "counterfeit cosmetic" means a drug, device, or cosmetic which,
189 or the container, seal, or labeling of which, without
190 authorization, bears the trademark, trade name, or other
191 identifying mark, imprint, or device, or any likeness thereof,
192 of a drug, device, or cosmetic manufacturer, processor, packer,
193 or distributor other than the person that in fact manufactured,
194 processed, packed, or distributed that drug, device, or cosmetic
195 and which thereby falsely purports or is represented to be the
196 product of, or to have been packed or distributed by, that other
197 drug, device, or cosmetic manufacturer, processor, packer, or
198 distributor.

199 (14) "Department" means the Department of Business and
200 Professional Regulation.

201 (15) "Device" means any instrument, apparatus, implement,
202 machine, contrivance, implant, in vitro reagent, or other
203 similar or related article, including its components, parts, or
204 accessories, which is:

205 (a) Recognized in the current edition of the United States
206 Pharmacopoeia and National Formulary, or any supplement thereof,

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207 (b) Intended for use in the diagnosis, cure, mitigation,
208 treatment, therapy, or prevention of disease in humans or other
209 animals, or

210 (c) Intended to affect the structure or any function of the
211 body of humans or other animals,

212
213 and that does not achieve any of its principal intended purposes
214 through chemical action within or on the body of humans or other
215 animals and which is not dependent upon being metabolized for
216 the achievement of any of its principal intended purposes.

217 (16) "Distribute" or "distribution" means to sell,
218 purchase, trade, deliver, handle, store, or receive to sell,
219 offer to sell, give away, transfer, whether by passage of title,
220 physical movement, or both; deliver; or offer to deliver. The
221 term does not mean to administer or dispense and does not
222 include the billing and invoicing activities that commonly
223 follow a wholesale distribution transaction.

224 ~~(17) "Drop shipment" means the sale of a prescription drug~~
225 ~~from a manufacturer to a wholesale distributor, where the~~
226 ~~wholesale distributor takes title to, but not possession of, the~~
227 ~~prescription drug, and the manufacturer of the prescription drug~~
228 ~~ships the prescription drug directly to a chain pharmacy~~
229 ~~warehouse or a person authorized by law to purchase prescription~~
230 ~~drugs for the purpose of administering or dispensing the drug,~~
231 ~~as defined in s. 465.003.~~

232 (17)~~(18)~~ "Drug" means an article that is:

233 (a) Recognized in the current edition of the United States
234 Pharmacopoeia and National Formulary, official Homeopathic
235 Pharmacopoeia of the United States, or any supplement to any of

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236 those publications;

237 (b) Intended for use in the diagnosis, cure, mitigation,
238 treatment, therapy, or prevention of disease in humans or other
239 animals;

240 (c) Intended to affect the structure or any function of the
241 body of humans or other animals; or

242 (d) Intended for use as a component of any article
243 specified in paragraph (a), paragraph (b), or paragraph (c), and
244 includes active pharmaceutical ingredients, but does not include
245 devices or their nondrug components, parts, or accessories. ~~For~~
246 ~~purposes of this paragraph, an "active pharmaceutical~~
247 ~~ingredient" includes any substance or mixture of substances~~
248 ~~intended, represented, or labeled for use in drug manufacturing~~
249 ~~that furnishes or is intended to furnish, in a finished dosage~~
250 ~~form, any pharmacological activity or other direct effect in the~~
251 ~~diagnosis, cure, mitigation, treatment, therapy, or prevention~~
252 ~~of disease in humans or other animals, or to affect the~~
253 ~~structure or any function of the body of humans or other~~
254 ~~animals.~~

255 (18)~~(19)~~ "Establishment" means a place of business which is
256 at one general physical location and may extend to one or more
257 contiguous suites, units, floors, or buildings operated and
258 controlled exclusively by entities under common operation and
259 control. Where multiple buildings are under common exclusive
260 ownership, operation, and control, an intervening thoroughfare
261 does not affect the contiguous nature of the buildings. For
262 purposes of permitting, each suite, unit, floor, or building
263 must be identified in the most recent permit application.

264 (19)~~(20)~~ "Federal act" means the Federal Food, Drug, and

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265 Cosmetic Act, 21 U.S.C. ss. 301 et seq.; 52 Stat. 1040 et seq.

266 (20)~~(21)~~ "Freight forwarder" means a person who receives
267 prescription drugs which are owned by another person and
268 designated by that person for export, and exports those
269 prescription drugs.

270 (21)~~(22)~~ "Health care entity" means a closed pharmacy or
271 any person, organization, or business entity that provides
272 diagnostic, medical, surgical, or dental treatment or care, or
273 chronic or rehabilitative care, but does not include any
274 wholesale distributor or retail pharmacy licensed under state
275 law to deal in prescription drugs. However, a blood
276 establishment is a health care entity that may engage in the
277 wholesale distribution of prescription drugs under s.
278 499.01(2)(h)1.c. ~~499.01(2)(g)1.e.~~

279 (22)~~(23)~~ "Health care facility" means a health care
280 facility licensed under chapter 395.

281 (23)~~(24)~~ "Hospice" means a corporation licensed under part
282 IV of chapter 400.

283 (24)~~(25)~~ "Hospital" means a facility as defined in s.
284 395.002 and licensed under chapter 395.

285 (25)~~(26)~~ "Immediate container" does not include package
286 liners.

287 (26)~~(27)~~ "Label" means a display of written, printed, or
288 graphic matter upon the immediate container of any drug, device,
289 or cosmetic. A requirement made by or under authority of this
290 part or rules adopted under this part that any word, statement,
291 or other information appear on the label is not complied with
292 unless such word, statement, or other information also appears
293 on the outside container or wrapper, if any, of the retail

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294 package of such drug, device, or cosmetic or is easily legible
295 through the outside container or wrapper.

296 ~~(27)(28)~~ "Labeling" means all labels and other written,
297 printed, or graphic matters:

298 (a) Upon a drug, device, or cosmetic, or any of its
299 containers or wrappers; or

300 (b) Accompanying or related to such drug, device, or
301 cosmetic.

302 ~~(28)(29)~~ "Manufacture" means the preparation, deriving,
303 compounding, propagation, processing, producing, or fabrication
304 of any drug, device, or cosmetic.

305 ~~(29)(30)~~ "Manufacturer" means:

306 (a) A person who holds a New Drug Application, an
307 Abbreviated New Drug Application, a Biologics License
308 Application, or a New Animal Drug Application approved under the
309 federal act or a license issued under s. 351 of the Public
310 Health Service Act, 42 U.S.C. s. 262, for such drug or
311 biologics, or if such drug or biologics is not the subject of an
312 approved application or license, the person who manufactured the
313 drug or biologics prepares, derives, manufactures, or produces a
314 drug, device, or cosmetic;

315 (b) A co-licensed partner of the person described in
316 paragraph (a) who obtains the drug or biologics directly from a
317 person described in paragraph (a), paragraph (c), or this
318 paragraph. The holder or holders of a New Drug Application (NDA),
319 an Abbreviated New Drug Application (ANDA), a Biologics License
320 Application (BLA), or a New Animal Drug Application (NADA),
321 provided such application has become effective or is otherwise
322 approved consistent with s. 499.023;

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323 (c) An affiliate of a person described in paragraph (a),
324 paragraph (b), or this paragraph that receives the drug or
325 biologics directly from a person described in paragraph (a),
326 paragraph (b), or this paragraph. A private label distributor for
327 whom the private label distributor's prescription drugs are
328 originally manufactured and labeled for the distributor and have
329 not been repackaged; or

330 (d) A person who manufactures a device or a cosmetic. A
331 person registered under the federal act as a manufacturer of a
332 prescription drug, who is described in paragraph (a), paragraph
333 (b), or paragraph (c), who has entered into a written agreement
334 with another prescription drug manufacturer that authorizes
335 either manufacturer to distribute the prescription drug
336 identified in the agreement as the manufacturer of that drug
337 consistent with the federal act and its implementing
338 regulations;

339 (e) A member of an affiliated group that includes, but is
340 not limited to, persons described in paragraph (a), paragraph
341 (b), paragraph (c), or paragraph (d), which member distributes
342 prescription drugs, whether or not obtaining title to the drugs,
343 only for the manufacturer of the drugs who is also a member of
344 the affiliated group. As used in this paragraph, the term
345 "affiliated group" means an affiliated group as defined in s.
346 1504 of the Internal Revenue Code of 1986, as amended. The
347 manufacturer must disclose the names of all of its affiliated
348 group members to the department; or

349 (f) A person permitted as a third party logistics provider,
350 only while providing warehousing, distribution, or other
351 logistics services on behalf of a person described in paragraph

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352 ~~(a), paragraph (b), paragraph (c), paragraph (d), or paragraph~~
 353 ~~(e).~~

354
 355 The term does not include a pharmacy that is operating in
 356 compliance with pharmacy practice standards as defined in
 357 chapter 465 and rules adopted under that chapter.

358 (30)~~(31)~~ "Medical convenience kit" means packages or units
 359 that contain combination products as defined in 21 C.F.R. s.
 360 3.2(e) (2).

361 (31)~~(32)~~ "Medical gas" means any liquefied or vaporized gas
 362 that is a prescription drug, whether alone or in combination
 363 with other gases, and as defined in the federal act.

364 (32)~~(33)~~ "New drug" means:

365 (a) Any drug the composition of which is such that the drug
 366 is not generally recognized, among experts qualified by
 367 scientific training and experience to evaluate the safety and
 368 effectiveness of drugs, as safe and effective for use under the
 369 conditions prescribed, recommended, or suggested in the labeling
 370 of that drug; or

371 (b) Any drug the composition of which is such that the
 372 drug, as a result of investigations to determine its safety and
 373 effectiveness for use under certain conditions, has been
 374 recognized for use under such conditions, but which drug has
 375 not, other than in those investigations, been used to a material
 376 extent or for a material time under such conditions.

377 ~~(34) "Normal distribution chain" means a wholesale~~
 378 ~~distribution of a prescription drug in which the wholesale~~
 379 ~~distributor or its wholly owned subsidiary purchases and~~
 380 ~~receives the specific unit of the prescription drug directly~~

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381 ~~from the manufacturer and distributes the prescription drug~~
 382 ~~directly, or through up to two intracompany transfers, to a~~
 383 ~~chain pharmacy warehouse or a person authorized by law to~~
 384 ~~purchase prescription drugs for the purpose of administering or~~
 385 ~~dispensing the drug, as defined in s. 465.003. For purposes of~~
 386 ~~this subsection, the term "intracompany" means any transaction~~
 387 ~~or transfer between any parent, division, or subsidiary wholly~~
 388 ~~owned by a corporate entity.~~

389 (33)~~(35)~~ "Nursing home" means a facility licensed under
 390 part II of chapter 400.

391 (34)~~(36)~~ "Official compendium" means the current edition of
 392 the official United States Pharmacopoeia and National Formulary,
 393 or any supplement thereto.

394 ~~(37) "Pedigree paper" means a document in written or~~
 395 ~~electronic form approved by the department which contains~~
 396 ~~information required by s. 499.01212 regarding the sale and~~
 397 ~~distribution of any given prescription drug.~~

398 (35)~~(38)~~ "Permittee" means any person holding a permit
 399 issued under this chapter pursuant to s. 499.012.

400 (36)~~(39)~~ "Person" means any individual, child, joint
 401 venture, syndicate, fiduciary, partnership, corporation,
 402 division of a corporation, firm, trust, business trust, company,
 403 estate, public or private institution, association,
 404 organization, group, city, county, city and county, political
 405 subdivision of this state, other governmental agency within this
 406 state, and any representative, agent, or agency of any of the
 407 foregoing, or any other group or combination of the foregoing.

408 (37)~~(40)~~ "Pharmacist" means a person licensed under chapter
 409 465.

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410 ~~(38)-(41)~~ "Pharmacy" means an entity licensed under chapter
411 465.

412 ~~(39)-(42)~~ "Prepackaged drug product" means a drug that
413 originally was in finished packaged form sealed by a
414 manufacturer and that is placed in a properly labeled container
415 by a pharmacy or practitioner authorized to dispense pursuant to
416 chapter 465 for the purpose of dispensing in the establishment
417 in which the prepackaging occurred.

418 ~~(40)-(43)~~ "Prescription drug" means a prescription,
419 medicinal, or legend drug, including, but not limited to,
420 finished dosage forms or active pharmaceutical ingredients
421 subject to, defined by, or described by s. 503(b) of the federal
422 act or s. 465.003(8), s. 499.007(13), subsection (31) ~~(32)~~, or
423 subsection (47) ~~(52)~~, except that an active pharmaceutical
424 ingredient is a prescription drug only if substantially all
425 finished dosage forms in which it may be lawfully dispensed or
426 administered in this state are also prescription drugs.

427 ~~(41)-(44)~~ "Prescription drug label" means any display of
428 written, printed, or graphic matter upon the immediate container
429 of any prescription drug before it is dispensed ~~prior to its~~
430 ~~dispensing~~ to an individual patient pursuant to a prescription
431 of a practitioner authorized by law to prescribe.

432 ~~(42)-(45)~~ "Prescription label" means any display of written,
433 printed, or graphic matter upon the immediate container of any
434 prescription drug dispensed pursuant to a prescription of a
435 practitioner authorized by law to prescribe.

436 ~~(46)~~ "Primary wholesale distributor" means any wholesale
437 distributor that:

438 ~~(a)~~ Purchased 90 percent or more of the total dollar volume

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439 ~~of its purchases of prescription drugs directly from~~
440 ~~manufacturers in the previous year; and~~

441 ~~(b)1. Directly purchased prescription drugs from not fewer~~
442 ~~than 50 different prescription drug manufacturers in the~~
443 ~~previous year; or~~

444 ~~2. Has, or the affiliated group, as defined in s. 1504 of~~
445 ~~the Internal Revenue Code, of which the wholesale distributor is~~
446 ~~a member has, not fewer than 250 employees.~~

447 ~~(c) For purposes of this subsection, "directly from~~
448 ~~manufacturers" means:~~

449 ~~1. Purchases made by the wholesale distributor directly~~
450 ~~from the manufacturer of prescription drugs; and~~

451 ~~2. Transfers from a member of an affiliated group, as~~
452 ~~defined in s. 1504 of the Internal Revenue Code, of which the~~
453 ~~wholesale distributor is a member, if:~~

454 ~~a. The affiliated group purchases 90 percent or more of the~~
455 ~~total dollar volume of its purchases of prescription drugs from~~
456 ~~the manufacturer in the previous year; and~~

457 ~~b. The wholesale distributor discloses to the department~~
458 ~~the names of all members of the affiliated group of which the~~
459 ~~wholesale distributor is a member and the affiliated group~~
460 ~~agrees in writing to provide records on prescription drug~~
461 ~~purchases by the members of the affiliated group not later than~~
462 ~~48 hours after the department requests access to such records,~~
463 ~~regardless of the location where the records are stored.~~

464 ~~(43)-(47)~~ "Proprietary drug," or "OTC drug," means a patent
465 or over-the-counter drug in its unbroken, original package,
466 which drug is sold to the public by, or under the authority of,
467 the manufacturer or primary distributor thereof, is not

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468 misbranded under the provisions of this part, and can be
469 purchased without a prescription.

470 ~~(44)(48)~~ "Repackage" includes repacking or otherwise
471 changing the container, wrapper, or labeling to further the
472 distribution of the drug, device, or cosmetic.

473 ~~(45)(49)~~ "Repackager" means a person who repackages. The
474 term excludes pharmacies that are operating in compliance with
475 pharmacy practice standards as defined in chapter 465 and rules
476 adopted under that chapter.

477 ~~(46)(50)~~ "Retail pharmacy" means a community pharmacy
478 licensed under chapter 465 that purchases prescription drugs at
479 fair market prices and provides prescription services to the
480 public.

481 ~~(51) "Secondary wholesale distributor" means a wholesale
482 distributor that is not a primary wholesale distributor.~~

483 ~~(47)(52)~~ "Veterinary prescription drug" means a
484 prescription drug intended solely for veterinary use. The label
485 of the drug must bear the statement, "Caution: Federal law
486 restricts this drug to sale by or on the order of a licensed
487 veterinarian."

488 ~~(48)(53)~~ "Wholesale distribution" means the distribution of
489 a prescription drug to a person ~~drugs to persons~~ other than a
490 consumer or patient, or the receipt of a prescription drug by a
491 person other than the consumer or patient, but does not include:

492 (a) Any of the following activities, which is not a
493 violation of s. 499.005(21) if such activity is conducted in
494 accordance with s. 499.01(2)(h) ~~499.01(2)(g)~~:

495 1. The purchase or other acquisition by a hospital or other
496 health care entity that is a member of a group purchasing

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497 organization of a prescription drug for its own use from the
498 group purchasing organization or from other hospitals or health
499 care entities that are members of that organization.

500 2. The distribution sale, purchase, or trade of a
501 prescription drug or an offer to distribute ~~sell, purchase, or~~
502 ~~trade~~ a prescription drug by a charitable organization described
503 in s. 501(c)(3) of the Internal Revenue Code of 1986, as amended
504 and revised, to a nonprofit affiliate of the organization to the
505 extent otherwise permitted by law.

506 3. The distribution sale, purchase, or trade of a
507 prescription drug ~~or an offer to sell, purchase, or trade a~~
508 ~~prescription drug~~ among hospitals or other health care entities
509 that are under common control. For purposes of this
510 subparagraph, "common control" means the power to direct or
511 cause the direction of the management and policies of a person
512 or an organization, whether by ownership of stock, by voting
513 rights, by contract, or otherwise.

514 4. The distribution sale, purchase, trade, or other
515 ~~transfer~~ of a prescription drug from or for any federal, state,
516 or local government agency or any entity eligible to purchase
517 prescription drugs at public health services prices pursuant to
518 Pub. L. No. 102-585, s. 602 to a contract provider or its
519 subcontractor for eligible patients of the agency or entity
520 under the following conditions:

521 a. The agency or entity must obtain written authorization
522 for the distribution sale, purchase, trade, or other transfer of
523 a prescription drug under this subparagraph from the Secretary
524 of Business and Professional Regulation or his or her designee.

525 b. The contract provider or subcontractor must be

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526 authorized by law to administer or dispense prescription drugs.

527 c. In the case of a subcontractor, the agency or entity

528 must be a party to and execute the subcontract.

529 d. The contract provider and subcontractor must maintain

530 and produce immediately for inspection all records of movement

531 or transfer of all the prescription drugs belonging to the

532 agency or entity, including, but not limited to, the records of

533 receipt and disposition of prescription drugs. Each contractor

534 and subcontractor dispensing or administering these drugs must

535 maintain and produce records documenting the dispensing or

536 administration. Records that are required to be maintained

537 include, but are not limited to, a perpetual inventory itemizing

538 drugs received and drugs dispensed by prescription number or

539 administered by patient identifier, which must be submitted to

540 the agency or entity quarterly.

541 e. The contract provider or subcontractor may administer or

542 dispense the prescription drugs only to the eligible patients of

543 the agency or entity or must return the prescription drugs for

544 or to the agency or entity. The contract provider or

545 subcontractor must require proof from each person seeking to

546 fill a prescription or obtain treatment that the person is an

547 eligible patient of the agency or entity and must, at a minimum,

548 maintain a copy of this proof as part of the records of the

549 contractor or subcontractor required under sub-subparagraph d.

550 f. In addition to the departmental inspection authority set

551 forth in s. 499.051, the establishment of the contract provider

552 and subcontractor and all records pertaining to prescription

553 drugs subject to this subparagraph shall be subject to

554 inspection by the agency or entity. All records relating to

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555 prescription drugs of a manufacturer under this subparagraph

556 shall be subject to audit by the manufacturer of those drugs,

557 without identifying individual patient information.

558 (b) Any of the following activities, which is not a

559 violation of s. 499.005(21) if such activity is conducted in

560 accordance with rules established by the department:

561 1. The distribution sale, purchase, or trade of a

562 prescription drug among federal, state, or local government

563 health care entities that are under common control and are

564 authorized to purchase such prescription drug.

565 2. The distribution sale, purchase, or trade of a

566 prescription drug or ~~an offer to distribute sell, purchase, or~~

567 ~~trade~~ a prescription drug for emergency medical reasons, which

568 may include. For purposes of this subparagraph, The term

569 "emergency medical reasons" includes transfers of prescription

570 drugs by a retail pharmacy to another retail pharmacy to

571 alleviate a temporary shortage. For purposes of this

572 subparagraph, a drug shortage not caused by a public health

573 emergency does not constitute an emergency medical reason.

574 3. The distribution transfer of a prescription drug

575 acquired by a medical director on behalf of a licensed emergency

576 medical services provider to that emergency medical services

577 provider and its transport vehicles for use in accordance with

578 the provider's license under chapter 401.

579 4. ~~The revocation of a sale or the return of a prescription~~

580 ~~drug to the person's prescription drug wholesale supplier.~~

581 4.5- The donation of a prescription drug by a health care

582 entity to a charitable organization that has been granted an

583 exemption under s. 501(c)(3) of the Internal Revenue Code of

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584 1986, as amended, and that is authorized to possess prescription
585 drugs.

586 ~~5.6-~~ The distribution transfer of a prescription drug by a
587 person authorized to purchase or receive prescription drugs to a
588 person licensed or permitted to handle reverse distributions or
589 destruction under the laws of the jurisdiction in which the
590 person handling the reverse distribution or destruction receives
591 the drug.

592 ~~6.7-~~ The distribution transfer of a prescription drug by a
593 hospital or other health care entity to a person licensed under
594 this part to repackaging prescription drugs for the purpose of
595 repackaging the prescription drug for use by that hospital, or
596 other health care entity and other health care entities that are
597 under common control, if ownership of the prescription drugs
598 remains with the hospital or other health care entity at all
599 times. In addition to the recordkeeping requirements of s.
600 499.0121(6), the hospital or health care entity that distributes
601 ~~transfers~~ prescription drugs pursuant to this subparagraph must
602 reconcile all drugs distributed transferred and returned and
603 resolve any discrepancies in a timely manner.

604 (c) Intracompany distribution of any drug between members
605 of an affiliate or within a manufacturer.

606 (d) The distribution of a prescription drug by the
607 manufacturer of the prescription drug.

608 ~~(e)-(e)~~ The distribution of prescription drug samples by
609 manufacturers' representatives or distributors' representatives
610 conducted in accordance with s. 499.028.

611 (f) The distribution of a prescription drug by a third-
612 party logistics provider permitted or licensed pursuant to and

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613 operating in compliance with the laws of this state and federal
614 law if such third-party logistics provider does not take
615 ownership of the prescription drug.

616 (g) The distribution of a prescription drug, or an offer to
617 distribute a prescription drug by a repackager registered as a
618 drug establishment with the United States Food and Drug
619 Administration that has taken ownership or possession of the
620 prescription drug and repacks it in accordance with this part.

621 (h) The purchase or other acquisition by a dispenser,
622 hospital, or other health care entity of a prescription drug for
623 use by such dispenser, hospital, or other health care entity.

624 (i) The distribution of a prescription drug by a hospital
625 or other health care entity, or by a wholesale distributor or
626 manufacturer operating at the direction of the hospital or other
627 health care entity, to a repackager for the purpose of
628 repackaging the prescription drug for use by that hospital, or
629 other health care entity and other health care entities that are
630 under common control, if ownership of the prescription drug
631 remains with the hospital or other health care entity at all
632 times.

633 ~~(j)-(d)~~ The distribution sale, purchase, or trade of blood
634 and blood components intended for transfusion. As used in this
635 paragraph, the term "blood" means whole blood collected from a
636 single donor and processed for transfusion or further
637 manufacturing, and the term "blood components" means that part
638 of the blood separated by physical or mechanical means.

639 ~~(k)-(e)~~ The lawful dispensing of a prescription drug in
640 accordance with chapter 465.

641 ~~(l)-(f)~~ The distribution sale, purchase, or trade of a

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642 prescription drug between pharmacies as a result of a sale,
643 transfer, merger, or consolidation of all or part of the
644 business of the pharmacies from or with another pharmacy,
645 whether accomplished as a purchase and sale of stock or of
646 business assets.

647 (m) The distribution of minimal quantities of prescription
648 drugs by a licensed retail pharmacy to a licensed practitioner
649 for office use in compliance with chapter 465 and rules adopted
650 thereunder.

651 (n) The distribution of an intravenous prescription drug
652 that, by its formulation, is intended for the replenishment of
653 fluids and electrolytes, such as sodium, chloride, and potassium
654 or calories, such as dextrose and amino acids.

655 (o) The distribution of an intravenous prescription drug
656 used to maintain the equilibrium of water and minerals in the
657 body, such as dialysis solutions.

658 (p) The distribution of a prescription drug that is
659 intended for irrigation or sterile water, whether intended for
660 such purposes or for injection.

661 (q) The distribution of an exempt medical convenience kit
662 pursuant to 21 U.S.C. s. 353(e) (4) (M).

663 (r) A common carrier that transports a prescription drug,
664 if the common carrier does not take ownership of the
665 prescription drug.

666 (s) Saleable drug returns when conducted by a dispenser.

667 (t) Facilitating the distribution of a prescription drug by
668 providing solely administrative services, including processing
669 of orders and payments.

670 (u) The distribution by a charitable organization described

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671 in s. 501(c)(3) of the Internal Revenue Code of prescription
672 drugs donated to or supplied at a reduced price to the
673 charitable organization to:

674 1. A licensed health care practitioner, as defined in s.
675 456.001, who is authorized under the appropriate practice act to
676 prescribe and administer prescription drugs;

677 2. A health care clinic establishment permitted pursuant to
678 chapter 499; or

679 3. The Department of Health or the licensed medical
680 director of a government agency health care entity, authorized
681 to possess prescription drugs, for storage and use in the
682 treatment of persons in need of emergency medical services,
683 including controlling communicable diseases or providing
684 protection from unsafe conditions that pose an imminent threat
685 to public health,

686 if the distributor and the receiving entity receive no direct or
687 indirect financial benefit other than tax benefits related to
688 charitable contributions. Distributions under this section that
689 involve controlled substances must comply with all state and
690 federal regulations pertaining to the handling of controlled
691 substances.

692 (v) The distribution of medical gas pursuant to part III of
693 this chapter.

694 (49)-(54) "Wholesale distributor" means a ~~any~~ person, other
695 than a manufacturer, a manufacturer's co-licensed partner, a
696 third-party logistics provider, or a repackager, who is engaged
697 in wholesale distribution of ~~prescription drugs in or into this~~
698 state, including, but not limited to, ~~manufacturers;~~
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700 ~~repackagers; own-label distributors; jobbers; private-label~~
 701 ~~distributors; brokers; warehouses, including manufacturers' and~~
 702 ~~distributors' warehouses, chain drug warehouses, and wholesale~~
 703 ~~drug warehouses; independent wholesale drug traders; exporters;~~
 704 ~~retail pharmacies; and the agents thereof that conduct wholesale~~
 705 ~~distributions.~~

706 Section 2. Subsections (21), (28), and (29) of section
 707 499.005, Florida Statutes, are amended to read:

708 499.005 Prohibited acts.—It is unlawful for a person to
 709 perform or cause the performance of any of the following acts in
 710 this state:

711 (21) The wholesale distribution of any prescription drug
 712 that was:

713 (a) Purchased by a public or private hospital or other
 714 health care entity; or

715 (b) Donated or supplied at a reduced price to a charitable
 716 organization,

717 unless the wholesale distribution of the prescription drug is
 718 authorized in s. 499.01(2)(h)1.c. ~~499.01(2)(g)1.c.~~

719 (28) Failure to acquire or deliver a transaction history,
 720 transaction information, or transaction statement pedigree paper
 721 as required under this part and rules adopted under this part.

722 ~~(29) The receipt of a prescription drug pursuant to a~~
 723 ~~wholesale distribution without having previously received or~~
 724 ~~simultaneously receiving a pedigree paper that was attested to~~
 725 ~~as accurate and complete by the wholesale distributor as~~
 726 ~~required under this part.~~

727 Section 3. Subsections (4) through (17) of section
 728

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729 499.0051, Florida Statutes, are renumbered as subsections (3)
 730 through (16), respectively, and subsections (1) and (2), present
 731 subsection (3), paragraphs (h) and (i) of present subsection
 732 (12), paragraph (d) of present subsection (13), and present
 733 subsection (15) of that section are amended, to read:

734 499.0051 Criminal acts.—

735 (1) FAILURE TO MAINTAIN OR DELIVER TRANSACTION HISTORY,
 736 TRANSACTION INFORMATION, OR TRANSACTION STATEMENT PEDIGREE
 737 PAPERS.—

738 (a) A person, ~~other than a manufacturer,~~ engaged in the
 739 ~~wholesale~~ distribution of prescription drugs who fails to
 740 deliver to another person a complete and accurate transaction
 741 history, transaction information, or transaction statement
 742 pedigree papers concerning a prescription drug or contraband
 743 prescription drug, as required by this chapter and rules adopted
 744 under this chapter, before ~~prior to,~~ or simultaneous with, the
 745 transfer of the prescription drug or contraband prescription
 746 drug to another person commits a felony of the third degree,
 747 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

748 (b) A person engaged in the ~~wholesale~~ distribution of
 749 prescription drugs who fails to acquire a complete and accurate
 750 transaction history, transaction information, or transaction
 751 statement pedigree papers concerning a prescription drug or
 752 contraband prescription drug, as required by this chapter and
 753 rules adopted under this chapter, before ~~prior to,~~ or
 754 simultaneous with, the receipt of the prescription drug or
 755 contraband prescription drug from another person commits a
 756 felony of the third degree, punishable as provided in s.
 757 775.082, s. 775.083, or s. 775.084.

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758 (c) Any person who knowingly destroys, alters, conceals, or
 759 fails to maintain a complete and accurate transaction history,
 760 transaction information, or transaction statement pedigree
 761 papers concerning any prescription drug or contraband
 762 prescription drug, as required by this chapter and rules adopted
 763 under this chapter, in his or her possession commits a felony of
 764 the third degree, punishable as provided in s. 775.082, s.
 765 775.083, or s. 775.084.

766 ~~(2) FAILURE TO AUTHENTICATE PEDIGREE PAPERS. Effective July~~
 767 ~~1, 2006:~~

768 ~~(a) A person engaged in the wholesale distribution of~~
 769 ~~prescription drugs who is in possession of pedigree papers~~
 770 ~~concerning prescription drugs or contraband prescription drugs~~
 771 ~~and who fails to authenticate the matters contained in the~~
 772 ~~pedigree papers and who nevertheless attempts to further~~
 773 ~~distribute prescription drugs or contraband prescription drugs~~
 774 ~~commits a felony of the third degree, punishable as provided in~~
 775 ~~s. 775.082, s. 775.083, or s. 775.084.~~

776 ~~(b) A person in possession of pedigree papers concerning~~
 777 ~~prescription drugs or contraband prescription drugs who falsely~~
 778 ~~swears or certifies that he or she has authenticated the matters~~
 779 ~~contained in the pedigree papers commits a felony of the third~~
 780 ~~degree, punishable as provided in s. 775.082, s. 775.083, or s.~~
 781 ~~775.084.~~

782 (2)(3) KNOWING FORGERY OF TRANSACTION HISTORY, TRANSACTION
 783 INFORMATION, OR TRANSACTION STATEMENT PEDIGREE PAPERS.—A person
 784 who knowingly forges, counterfeits, or falsely creates any
 785 transaction history, transaction information, or transaction
 786 statement pedigree paper; who falsely represents any factual

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787 matter contained on any transaction history, transaction
 788 information, or transaction statement pedigree paper; or who
 789 knowingly omits to record material information required to be
 790 recorded in a transaction history, transaction information, or
 791 transaction statement pedigree paper, commits a felony of the
 792 second degree, punishable as provided in s. 775.082, s. 775.083,
 793 or s. 775.084.

794 ~~(11)(12) ADULTERATED AND MISBRANDED DRUGS; FALSE~~
 795 ~~ADVERTISEMENT; FAILURE TO MAINTAIN RECORDS RELATING TO DRUGS.—~~
 796 Any person who violates any of the following provisions commits
 797 a misdemeanor of the second degree, punishable as provided in s.
 798 775.082 or s. 775.083; but, if the violation is committed after
 799 a conviction of such person under this subsection has become
 800 final, such person commits a misdemeanor of the first degree,
 801 punishable as provided in s. 775.082 or s. 775.083, or as
 802 otherwise provided in this part:

803 (h) The failure to maintain records related to a drug as
 804 required by this part and rules adopted under this part, except
 805 for transaction histories, transaction information, or
 806 transaction statements pedigree papers, invoices, or shipping
 807 documents related to prescription drugs.

808 (i) The possession of any drug in violation of this part,
 809 except if the violation relates to a deficiency in transaction
 810 histories, transaction information, or transaction statements
 811 pedigree papers.

812 ~~(12)(13) REFUSAL TO ALLOW INSPECTION; SELLING, PURCHASING,~~
 813 ~~OR TRADING DRUG SAMPLES; FAILURE TO MAINTAIN RECORDS RELATING TO~~
 814 ~~PRESCRIPTION DRUGS.—Any person who violates any of the following~~
 815 provisions commits a felony of the third degree, punishable as

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816 provided in s. 775.082, s. 775.083, or s. 775.084, or as
817 otherwise provided in this part:

818 (d) The failure to receive, maintain, or provide invoices
819 and shipping documents, ~~other than pedigree papers,~~ if
820 applicable, related to the distribution of a prescription drug.

821 (15) FALSE ADVERTISEMENT.—A publisher, radio broadcast
822 licensee, or agency or medium for the dissemination of an
823 advertisement, except the manufacturer, repackager, wholesale
824 distributor, or seller of the article to which a false
825 advertisement relates, is not liable under subsection (11) ~~(12)~~,
826 subsection (12) ~~(13)~~, or subsection (13) ~~(14)~~ by reason of the
827 dissemination by him or her of such false advertisement, unless
828 he or she has refused, on the request of the department, to
829 furnish to the department the name and post office address of
830 the manufacturer, repackager, wholesale distributor, seller, or
831 advertising agency that asked him or her to disseminate such
832 advertisement.

833 Section 4. Section 499.006, Florida Statutes, is amended to
834 read:

835 499.006 Adulterated drug or device.—A drug or device is
836 adulterated, if any of the following apply:

837 (1) ~~It~~ It consists in whole or in part of any filthy,
838 putrid, or decomposed substance.~~+~~

839 (2) ~~It~~ It has been produced, prepared, packed, or held
840 under conditions whereby it could have been contaminated with
841 filth or rendered injurious to health.~~+~~

842 (3) ~~It~~ It is a drug and the methods used in, or the
843 facilities or controls used for, its manufacture, processing,
844 packing, or holding do not conform to, or are not operated or

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845 administered in conformity with, current good manufacturing
846 practices to assure that the drug meets the requirements of this
847 part and that the drug has the identity and strength, and meets
848 the standard of quality and purity, which it purports or is
849 represented to possess.~~+~~

850 (4) ~~It~~ It is a drug and its container is composed, in whole
851 or in part, of any poisonous or deleterious substance which
852 could render the contents injurious to health.~~+~~

853 (5) ~~It~~ It is a drug and it bears or contains, for the
854 purpose of coloring only, a color additive that is unsafe within
855 the meaning of the federal act; or, if it is a color additive,
856 the intended use of which in or on drugs is for the purpose of
857 coloring only, and it is unsafe within the meaning of the
858 federal act.~~+~~

859 (6) ~~It~~ It purports to be, or is represented as, a drug the
860 name of which is recognized in the official compendium, and its
861 strength differs from, or its quality or purity falls below, the
862 standard set forth in such compendium. The determination as to
863 strength, quality, or purity must be made in accordance with the
864 tests or methods of assay set forth in such compendium, or, when
865 such tests or methods of assay are absent or inadequate, in
866 accordance with those tests or methods of assay prescribed under
867 authority of the federal act. A drug defined in the official
868 compendium is not adulterated under this subsection merely
869 because it differs from the standard of strength, quality, or
870 purity set forth for that drug in such compendium if its
871 difference in strength, quality, or purity from such standard is
872 plainly stated on its label.~~+~~

873 (7) ~~It~~ It is not subject to subsection (6) and its strength

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874 differs from, or its purity or quality falls below the standard
 875 of, that which it purports or is represented to possess_+
 876 (8) ~~It is a drug:~~
 877 (a) With which any substance has been mixed or packed so as
 878 to reduce the quality or strength of the drug; or
 879 (b) For which any substance has been substituted wholly or
 880 in part_+
 881 (9) ~~It is a drug or device for which the expiration date~~
 882 ~~has passed_+.~~
 883 (10) ~~It is a prescription drug for which the required~~
 884 transaction history, transaction information, or transaction
 885 statement pedigree paper is nonexistent, fraudulent, or
 886 incomplete under the requirements of this part or applicable
 887 rules, or that has been purchased, held, sold, or distributed at
 888 any time by a person not authorized under federal or state law
 889 to do so_+~~or~~
 890 (11) ~~It is a prescription drug subject to, defined by,~~
 891 or described by s. 503(b) of the Federal Food, Drug, and
 892 Cosmetic Act which has been returned by a veterinarian to a
 893 limited prescription drug veterinary wholesale distributor.
 894 Section 5. Section 499.01, Florida Statutes, is amended to
 895 read:
 896 499.01 Permits.—
 897 (1) ~~Before~~ Prior to operating, a permit is required for
 898 each person and establishment that intends to operate as:
 899 (a) A prescription drug manufacturer;
 900 (b) A prescription drug repackager;
 901 (c) A nonresident prescription drug manufacturer;
 902 (d) A nonresident prescription drug repackager;

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903 ~~(e)-(d)~~ A prescription drug wholesale distributor;
 904 ~~(f)-(e)~~ An out-of-state prescription drug wholesale
 905 distributor;
 906 ~~(g)-(f)~~ A retail pharmacy drug wholesale distributor;
 907 ~~(h)-(g)~~ A restricted prescription drug distributor;
 908 ~~(i)-(h)~~ A complimentary drug distributor;
 909 ~~(j)-(i)~~ A freight forwarder;
 910 ~~(k)-(j)~~ A veterinary prescription drug retail establishment;
 911 ~~(l)-(k)~~ A veterinary prescription drug wholesale
 912 distributor;
 913 ~~(m)-(l)~~ A limited prescription drug veterinary wholesale
 914 distributor;
 915 ~~(n)-(m)~~ An over-the-counter drug manufacturer;
 916 ~~(o)-(n)~~ A device manufacturer;
 917 ~~(p)-(o)~~ A cosmetic manufacturer;
 918 ~~(q)-(p)~~ A third party logistics provider; or
 919 ~~(r)-(q)~~ A health care clinic establishment.
 920 (2) The following permits are established:
 921 (a) *Prescription drug manufacturer permit.*—A prescription
 922 drug manufacturer permit is required for any person that is a
 923 manufacturer of a prescription drug and that manufactures or
 924 distributes such prescription drugs in this state.
 925 1. A person that operates an establishment permitted as a
 926 prescription drug manufacturer may engage in ~~wholesale~~
 927 distribution of prescription drugs for which the person is the
 928 manufacturer manufactured at that establishment and must comply
 929 with s. 499.0121 and all ~~other of the~~ provisions of this part,
 930 ~~except s. 499.01212, and the rules adopted under this part,~~
 931 ~~except s. 499.01212, which apply to a wholesale distributor. The~~

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932 department shall adopt rules for issuing a virtual prescription
 933 drug manufacturer permit to a person who engages in the
 934 manufacture of prescription drugs but does not make or take
 935 physical possession of any prescription drugs. The rules adopted
 936 by the department under this section may exempt virtual
 937 manufacturers from certain establishment, security, and storage
 938 requirements set forth in s. 499.0121.

939 2. A prescription drug manufacturer must comply with all
 940 appropriate state and federal good manufacturing practices.

941 3. A blood establishment, as defined in s. 381.06014,
 942 operating in a manner consistent with the provisions of 21
 943 C.F.R. parts 211 and 600-640, and manufacturing only the
 944 prescription drugs described in s. 499.003(48)(j) ~~499.003(53)(d)~~
 945 is not required to be permitted as a prescription drug
 946 manufacturer under this paragraph or to register products under
 947 s. 499.015.

948 (b) *Prescription drug repackager permit.*—A prescription
 949 drug repackager permit is required for any person that
 950 repackages a prescription drug in this state.

951 1. A person that operates an establishment permitted as a
 952 prescription drug repackager may engage in ~~wholesale~~
 953 distribution of prescription drugs repackaged at that
 954 establishment and must comply with all of the provisions of this
 955 part and the rules adopted under this part that apply to a
 956 prescription drug manufacturer ~~wholesale distributor~~.

957 2. A prescription drug repackager must comply with all
 958 appropriate state and federal good manufacturing practices.

959 (c) *Nonresident prescription drug manufacturer permit.*—A
 960 nonresident prescription drug manufacturer permit is required

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961 for any person that is a manufacturer of prescription drugs,
 962 unless permitted as a third party logistics provider, located
 963 outside of this state or outside the United States and that
 964 engages in the ~~wholesale~~ distribution in this state of such
 965 prescription drugs. Each such manufacturer must be permitted by
 966 the department and comply with all of the provisions required of
 967 a prescription drug manufacturer ~~wholesale distributor~~ under
 968 this part, ~~except s. 499.01212~~. The department shall adopt rules
 969 for issuing a virtual nonresident prescription drug manufacturer
 970 permit to a person who engages in the manufacture of
 971 prescription drugs but does not make or take physical possession
 972 of any prescription drugs. The rules adopted by the department
 973 under this section may exempt virtual nonresident manufacturers
 974 from certain establishment, security, and storage requirements
 975 set forth in s. 499.0121.

976 1. A person that distributes prescription drugs for which
 977 the person is not the manufacturer must also obtain an out-of-
 978 state prescription drug wholesale distributor permit or third
 979 party logistics provider permit pursuant to this section to
 980 engage in the ~~wholesale~~ distribution of such prescription drugs
 981 when required by this part. This subparagraph does not apply to
 982 a manufacturer that distributes prescription drugs only for the
 983 manufacturer of the prescription drugs where both manufacturers
 984 are affiliates ~~as defined in s. 499.003(30)(e)~~.

985 2. Any such person must comply with the licensing or
 986 permitting requirements of the jurisdiction in which the
 987 establishment is located and the federal act, and any
 988 prescription drug distributed ~~product~~ ~~wholesaled~~ into this state
 989 must comply with this part. If a person intends to import

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990 prescription drugs from a foreign country into this state, the
 991 nonresident prescription drug manufacturer must provide to the
 992 department a list identifying each prescription drug it intends
 993 to import and document approval by the United States Food and
 994 Drug Administration for such importation.

995 (d) Nonresident prescription drug repackager permit.-A
 996 nonresident prescription drug repackager permit is required for
 997 any person located outside of this state, but within the United
 998 States or its territories, that repackages prescription drugs
 999 and engages in the distribution of such prescription drugs into
 1000 this state.

1001 1. A nonresident prescription drug repackager must comply
 1002 with all of the provisions of this section and the rules adopted
 1003 under this section that apply to a prescription drug
 1004 manufacturer.

1005 2. A nonresident prescription drug repackager must be
 1006 permitted by the department and comply with all appropriate
 1007 state and federal good manufacturing practices.

1008 3. A nonresident prescription drug repackager must be
 1009 registered as a drug establishment with the United States Food
 1010 and Drug Administration.

1011 (e)(d) Prescription drug wholesale distributor permit.-A
 1012 prescription drug wholesale distributor permit is required for
 1013 any person who is a wholesale distributor of prescription drugs
 1014 and that may engage in the wholesale distributes such
 1015 distribution of prescription drugs in this state. A prescription
 1016 drug wholesale distributor that applies to the department for a
 1017 new permit or the renewal of a permit must submit a bond of
 1018 \$100,000, or other equivalent means of security acceptable to

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1019 ~~the department, such as an irrevocable letter of credit or a~~
 1020 ~~deposit in a trust account or financial institution, payable to~~
 1021 ~~the Professional Regulation Trust Fund. The purpose of the bond~~
 1022 ~~is to secure payment of any administrative penalties imposed by~~
 1023 ~~the department and any fees and costs incurred by the department~~
 1024 ~~regarding that permit which are authorized under state law and~~
 1025 ~~which the permittee fails to pay 30 days after the fine or costs~~
 1026 ~~become final. The department may make a claim against such bond~~
 1027 ~~or security until 1 year after the permittee's license ceases to~~
 1028 ~~be valid or until 60 days after any administrative or legal~~
 1029 ~~proceeding authorized in this part which involves the permittee~~
 1030 ~~is concluded, including any appeal, whichever occurs later. The~~
 1031 ~~department may adopt rules for issuing a prescription drug~~
 1032 ~~wholesale distributor-broker permit to a person who engages in~~
 1033 ~~the wholesale distribution of prescription drugs and does not~~
 1034 ~~take physical possession of any prescription drugs.~~

1035 (f)(e) Out-of-state prescription drug wholesale distributor
 1036 permit.-An out-of-state prescription drug wholesale distributor
 1037 permit is required for any person that is a wholesale
 1038 distributor located outside this state, but within the United
 1039 States or its territories, which engages in the wholesale
 1040 distribution of prescription drugs into this state and which
 1041 must be permitted by the department and comply with all the
 1042 provisions required of a wholesale distributor under this part.
 1043 An out-of-state prescription drug wholesale distributor that
 1044 applies to the department for a new permit or the renewal of a
 1045 permit must submit a bond of \$100,000, or other equivalent means
 1046 of security acceptable to the department, such as an irrevocable
 1047 letter of credit or a deposit in a trust account or financial

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1048 ~~institution, payable to the Professional Regulation Trust Fund.~~
 1049 ~~The purpose of the bond is to secure payment of any~~
 1050 ~~administrative penalties imposed by the department and any fees~~
 1051 ~~and costs incurred by the department regarding that permit which~~
 1052 ~~are authorized under state law and which the permittee fails to~~
 1053 ~~pay 30 days after the fine or costs become final. The department~~
 1054 ~~may make a claim against such bond or security until 1 year~~
 1055 ~~after the permittee's license ceases to be valid or until 60~~
 1056 ~~days after any administrative or legal proceeding authorized in~~
 1057 ~~this part which involves the permittee is concluded, including~~
 1058 ~~any appeal, whichever occurs later. The out-of-state~~
 1059 prescription drug wholesale distributor must maintain at all
 1060 times a license or permit to engage in the wholesale
 1061 distribution of prescription drugs in compliance with laws of
 1062 the state in which it is a resident. If the state from which the
 1063 wholesale distributor distributes prescription drugs does not
 1064 require a license to engage in the wholesale distribution of
 1065 prescription drugs, the distributor must be licensed as a
 1066 wholesale distributor as required by the federal act.

1067 (g) (f) Retail pharmacy drug wholesale distributor permit.—A
 1068 retail pharmacy drug wholesale distributor is a retail pharmacy
 1069 engaged in wholesale distribution of prescription drugs within
 1070 this state under the following conditions:

1071 1. The pharmacy must obtain a retail pharmacy drug
 1072 wholesale distributor permit pursuant to this part and ~~the~~ rules
 1073 adopted under this part.

1074 2. The wholesale distribution activity does not exceed 30
 1075 percent of the total annual purchases of prescription drugs. If
 1076 the wholesale distribution activity exceeds the 30-percent

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1077 maximum, the pharmacy must obtain a prescription drug wholesale
 1078 distributor permit.
 1079 3. The transfer of prescription drugs that appear in any
 1080 schedule contained in chapter 893 is subject to chapter 893 and
 1081 the federal Comprehensive Drug Abuse Prevention and Control Act
 1082 of 1970.
 1083 4. The transfer is between a retail pharmacy and another
 1084 retail pharmacy, or a Modified Class II institutional pharmacy,
 1085 or a health care practitioner licensed in this state and
 1086 authorized by law to dispense or prescribe prescription drugs.
 1087 5. All records of sales of prescription drugs subject to
 1088 this section must be maintained separate and distinct from other
 1089 records and comply with the recordkeeping requirements of this
 1090 part.
 1091 (h) (g) Restricted prescription drug distributor permit.—
 1092 1. A restricted prescription drug distributor permit is
 1093 required for:
 1094 a. Any person located in this state who engages in the
 1095 distribution of a prescription drug, which distribution is not
 1096 considered "wholesale distribution" under s. 499.003(48) (a)
 1097 499.003(53) (a).
 1098 b. Any person located in this state who engages in the
 1099 receipt or distribution of a prescription drug in this state for
 1100 the purpose of processing its return or its destruction if such
 1101 person is not the person initiating the return, the prescription
 1102 drug wholesale supplier of the person initiating the return, or
 1103 the manufacturer of the drug.
 1104 c. A blood establishment located in this state which
 1105 collects blood and blood components only from volunteer donors

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1106 as defined in s. 381.06014 or pursuant to an authorized
 1107 practitioner's order for medical treatment or therapy and
 1108 engages in the wholesale distribution of a prescription drug not
 1109 described in s. 499.003(48)(j) ~~499.003(53)(d)~~ to a health care
 1110 entity. A mobile blood unit operated by a blood establishment
 1111 permitted under this sub-subparagraph is not required to be
 1112 separately permitted. The health care entity receiving a
 1113 prescription drug distributed under this sub-subparagraph must
 1114 be licensed as a closed pharmacy or provide health care services
 1115 at that establishment. The blood establishment must operate in
 1116 accordance with s. 381.06014 and may distribute only:

1117 (I) Prescription drugs indicated for a bleeding or clotting
 1118 disorder or anemia;

1119 (II) Blood-collection containers approved under s. 505 of
 1120 the federal act;

1121 (III) Drugs that are blood derivatives, or a recombinant or
 1122 synthetic form of a blood derivative;

1123 (IV) Prescription drugs that are identified in rules
 1124 adopted by the department and that are essential to services
 1125 performed or provided by blood establishments and authorized for
 1126 distribution by blood establishments under federal law; or

1127 (V) To the extent authorized by federal law, drugs
 1128 necessary to collect blood or blood components from volunteer
 1129 blood donors; for blood establishment personnel to perform
 1130 therapeutic procedures under the direction and supervision of a
 1131 licensed physician; and to diagnose, treat, manage, and prevent
 1132 any reaction of a volunteer blood donor or a patient undergoing
 1133 a therapeutic procedure performed under the direction and
 1134 supervision of a licensed physician,

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1135 as long as all of the health care services provided by the blood
 1136 establishment are related to its activities as a registered
 1137 blood establishment or the health care services consist of
 1138 collecting, processing, storing, or administering human
 1139 hematopoietic stem cells or progenitor cells or performing
 1140 diagnostic testing of specimens if such specimens are tested
 1141 together with specimens undergoing routine donor testing. The
 1142 blood establishment may purchase and possess the drugs described
 1143 in this sub-subparagraph without a health care clinic
 1144 establishment permit.

1145 2. Storage, handling, and recordkeeping of these
 1146 distributions by a person required to be permitted as a
 1147 restricted prescription drug distributor must be in accordance
 1148 with the requirements for wholesale distributors under s.
 1149 499.0121, ~~but not those set forth in s. 499.01212 if the~~
 1150 ~~distribution occurs pursuant to sub-subparagraph 1.a. or sub-~~
 1151 ~~subparagraph 1.b.~~

1152 3. A person who applies for a permit as a restricted
 1153 prescription drug distributor, or for the renewal of such a
 1154 permit, must provide to the department the information required
 1155 under s. 499.012.

1156 4. The department may adopt rules regarding the
 1157 distribution of prescription drugs by hospitals, health care
 1158 entities, charitable organizations, other persons not involved
 1159 in wholesale distribution, and blood establishments, which rules
 1160 are necessary for the protection of the public health, safety,
 1161 and welfare.

1162 (i) ~~(h)~~ *Complimentary drug distributor permit.*-A
 1163

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1164 complimentary drug distributor permit is required for any person
 1165 that engages in the distribution of a complimentary drug,
 1166 subject to the requirements of s. 499.028.

1167 ~~(j)(i)~~ Freight forwarder permit.—A freight forwarder permit
 1168 is required for any person that engages in the distribution of a
 1169 prescription drug as a freight forwarder unless the person is a
 1170 common carrier. The storage, handling, and recordkeeping of such
 1171 distributions must comply with the requirements for wholesale
 1172 distributors under s. 499.0121, ~~but not those set forth in s.~~
 1173 ~~499.01212.~~ A freight forwarder must provide the source of the
 1174 prescription drugs with a validated airway bill, bill of lading,
 1175 or other appropriate documentation to evidence the exportation
 1176 of the product.

1177 ~~(k)(j)~~ Veterinary prescription drug retail establishment
 1178 permit.—A veterinary prescription drug retail establishment
 1179 permit is required for any person that sells veterinary
 1180 prescription drugs to the public but does not include a pharmacy
 1181 licensed under chapter 465.

1182 1. The sale to the public must be based on a valid written
 1183 order from a veterinarian licensed in this state who has a valid
 1184 client-veterinarian relationship with the purchaser's animal.

1185 2. Veterinary prescription drugs may not be sold in excess
 1186 of the amount clearly indicated on the order or beyond the date
 1187 indicated on the order.

1188 3. An order may not be valid for more than 1 year.

1189 4. A veterinary prescription drug retail establishment may
 1190 not purchase, sell, trade, or possess human prescription drugs
 1191 or any controlled substance as defined in chapter 893.

1192 5. A veterinary prescription drug retail establishment must

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1193 sell a veterinary prescription drug in the original, sealed
 1194 manufacturer's container with all labeling intact and legible.
 1195 The department may adopt by rule additional labeling
 1196 requirements for the sale of a veterinary prescription drug.

1197 6. A veterinary prescription drug retail establishment must
 1198 comply with all of the wholesale distribution requirements of s.
 1199 499.0121.

1200 7. Prescription drugs sold by a veterinary prescription
 1201 drug retail establishment pursuant to a practitioner's order may
 1202 not be returned into the retail establishment's inventory.

1203 ~~(l)(k)~~ Veterinary prescription drug wholesale distributor
 1204 permit.—A veterinary prescription drug wholesale distributor
 1205 permit is required for any person that engages in the
 1206 distribution of veterinary prescription drugs in or into this
 1207 state. A veterinary prescription drug wholesale distributor that
 1208 also distributes prescription drugs subject to, defined by, or
 1209 described by s. 503(b) of the Federal Food, Drug, and Cosmetic
 1210 Act which it did not manufacture must obtain a permit as a
 1211 prescription drug wholesale distributor, an out-of-state
 1212 prescription drug wholesale distributor, or a limited
 1213 prescription drug veterinary wholesale distributor in lieu of
 1214 the veterinary prescription drug wholesale distributor permit. A
 1215 veterinary prescription drug wholesale distributor must comply
 1216 with the requirements for wholesale distributors under s.
 1217 499.0121, ~~but not those set forth in s. 499.01212.~~

1218 ~~(m)(l)~~ Limited prescription drug veterinary wholesale
 1219 distributor permit.—Unless engaging in the activities of and
 1220 permitted as a prescription drug manufacturer, nonresident
 1221 prescription drug manufacturer, prescription drug wholesale

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1222 distributor, or out-of-state prescription drug wholesale
 1223 distributor, a limited prescription drug veterinary wholesale
 1224 distributor permit is required for any person that engages in
 1225 the distribution in or into this state of veterinary
 1226 prescription drugs and prescription drugs subject to, defined
 1227 by, or described by s. 503(b) of the Federal Food, Drug, and
 1228 Cosmetic Act under the following conditions:

1229 1. The person is engaged in the business of wholesaling
 1230 prescription and veterinary prescription drugs to persons:

1231 a. Licensed as veterinarians practicing on a full-time
 1232 basis;

1233 b. Regularly and lawfully engaged in instruction in
 1234 veterinary medicine;

1235 c. Regularly and lawfully engaged in law enforcement
 1236 activities;

1237 d. For use in research not involving clinical use; or
 1238 e. For use in chemical analysis or physical testing or for
 1239 purposes of instruction in law enforcement activities, research,
 1240 or testing.

1241 2. No more than 30 percent of total annual prescription
 1242 drug sales may be prescription drugs approved for human use
 1243 which are subject to, defined by, or described by s. 503(b) of
 1244 the Federal Food, Drug, and Cosmetic Act.

1245 3. The person does not distribute in any jurisdiction
 1246 prescription drugs subject to, defined by, or described by s.
 1247 503(b) of the Federal Food, Drug, and Cosmetic Act to any person
 1248 who is authorized to sell, distribute, purchase, trade, or use
 1249 these drugs on or for humans.

1250 4. A limited prescription drug veterinary wholesale

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1251 distributor that applies to the department for a new permit or
 1252 the renewal of a permit must submit a bond of \$20,000, or other
 1253 equivalent means of security acceptable to the department, such
 1254 as an irrevocable letter of credit or a deposit in a trust
 1255 account or financial institution, payable to the Professional
 1256 Regulation Trust Fund. The purpose of the bond is to secure
 1257 payment of any administrative penalties imposed by the
 1258 department and any fees and costs incurred by the department
 1259 regarding that permit which are authorized under state law and
 1260 which the permittee fails to pay 30 days after the fine or costs
 1261 become final. The department may make a claim against such bond
 1262 or security until 1 year after the permittee's license ceases to
 1263 be valid or until 60 days after any administrative or legal
 1264 proceeding authorized in this part which involves the permittee
 1265 is concluded, including any appeal, whichever occurs later.

1266 5. A limited prescription drug veterinary wholesale
 1267 distributor must maintain at all times a license or permit to
 1268 engage in the wholesale distribution of prescription drugs in
 1269 compliance with laws of the state in which it is a resident.

1270 6. A limited prescription drug veterinary wholesale
 1271 distributor must comply with the requirements for wholesale
 1272 distributors under s. ss. 499.0121 and 499.01212, ~~except that a~~
 1273 ~~limited prescription drug veterinary wholesale distributor is~~
 1274 ~~not required to provide a pedigree paper as required by s.~~
 1275 ~~499.01212 upon the wholesale distribution of a prescription drug~~
 1276 ~~to a veterinarian.~~

1277 7. A limited prescription drug veterinary wholesale
 1278 distributor may not return to inventory for subsequent wholesale
 1279 distribution any prescription drug subject to, defined by, or

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1280 described by s. 503(b) of the Federal Food, Drug, and Cosmetic
1281 Act which has been returned by a veterinarian.

1282 8. A limited prescription drug veterinary wholesale
1283 distributor permit is not required for an intracompany sale or
1284 transfer of a prescription drug from an out-of-state
1285 establishment that is duly licensed to engage in the wholesale
1286 distribution of prescription drugs in its state of residence to
1287 a licensed limited prescription drug veterinary wholesale
1288 distributor in this state if both wholesale distributors conduct
1289 wholesale distributions of prescription drugs under the same
1290 business name. The recordkeeping requirements of s. 499.0121(6)
1291 ~~and 499.01212~~ must be followed for this transaction.

1292 (n) ~~(m)~~ *Over-the-counter drug manufacturer permit.*—An over-
1293 the-counter drug manufacturer permit is required for any person
1294 that engages in the manufacture or repackaging of an over-the-
1295 counter drug.

1296 1. An over-the-counter drug manufacturer may not possess or
1297 purchase prescription drugs.

1298 2. A pharmacy is exempt from obtaining an over-the-counter
1299 drug manufacturer permit if it is operating in compliance with
1300 pharmacy practice standards as defined in chapter 465 and ~~the~~
1301 rules adopted under that chapter.

1302 3. An over-the-counter drug manufacturer must comply with
1303 all appropriate state and federal good manufacturing practices.

1304 (o) ~~(n)~~ *Device manufacturer permit.*—

1305 1. A device manufacturer permit is required for any person
1306 that engages in the manufacture, repackaging, or assembly of
1307 medical devices for human use in this state, except that a
1308 permit is not required if:

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1309 a. The person is engaged only in manufacturing,
1310 repackaging, or assembling a medical device pursuant to a
1311 practitioner's order for a specific patient; or

1312 b. The person does not manufacture, repackage, or assemble
1313 any medical devices or components for such devices, except those
1314 devices or components which are exempt from registration
1315 pursuant to s. 499.015(8).

1316 2. A manufacturer or repackager of medical devices in this
1317 state must comply with all appropriate state and federal good
1318 manufacturing practices and quality system rules.

1319 3. The department shall adopt rules related to storage,
1320 handling, and recordkeeping requirements for manufacturers of
1321 medical devices for human use.

1322 (p) ~~(e)~~ *Cosmetic manufacturer permit.*—A cosmetic
1323 manufacturer permit is required for any person that manufactures
1324 or repackages cosmetics in this state. A person that only labels
1325 or changes the labeling of a cosmetic but does not open the
1326 container sealed by the manufacturer of the product is exempt
1327 from obtaining a permit under this paragraph.

1328 (q) ~~(p)~~ *Third party logistics provider permit.*—A third party
1329 logistics provider permit is required for any person that
1330 contracts with a prescription drug wholesale distributor or
1331 prescription drug manufacturer to provide warehousing,
1332 distribution, or other logistics services on behalf of a
1333 manufacturer, ~~or~~ wholesale distributor, or dispenser, but who
1334 does not take title to the prescription drug or have
1335 responsibility to direct the sale or disposition of the
1336 prescription drug. A third party logistics provider located
1337 outside of this state, must be licensed in the state or

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1338 territory from which the prescription drug is distributed by the
 1339 third party logistics provider. If the state or territory from
 1340 which the third party logistics provider originates does not
 1341 require a license to operate as a third party logistics
 1342 provider, the third party logistic provider must be licensed as
 1343 a third party logistics provider as required by the federal act.

1344 Each third party logistics provider permittee shall comply with
 1345 ~~s. the requirements for wholesale distributors under ss.~~
 1346 ~~499.0121 and 499.01212, with the exception of those wholesale~~
 1347 ~~distributions described in s. 499.01212(3)(a), and other rules~~
 1348 that the department requires.

1349 ~~(r)(g) Health care clinic establishment permit. Effective~~
 1350 ~~January 1, 2009,~~ A health care clinic establishment permit is
 1351 required for the purchase of a prescription drug by a place of
 1352 business at one general physical location that provides health
 1353 care or veterinary services, which is owned and operated by a
 1354 business entity that has been issued a federal employer tax
 1355 identification number. For the purpose of this paragraph, the
 1356 term "qualifying practitioner" means a licensed health care
 1357 practitioner defined in s. 456.001, or a veterinarian licensed
 1358 under chapter 474, who is authorized under the appropriate
 1359 practice act to prescribe and administer a prescription drug.

1360 1. An establishment must provide, as part of the
 1361 application required under s. 499.012, designation of a
 1362 qualifying practitioner who will be responsible for complying
 1363 with all legal and regulatory requirements related to the
 1364 purchase, recordkeeping, storage, and handling of the
 1365 prescription drugs. In addition, the designated qualifying
 1366 practitioner shall be the practitioner whose name, establishment

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1367 address, and license number is used on all distribution
 1368 documents for prescription drugs purchased or returned by the
 1369 health care clinic establishment. Upon initial appointment of a
 1370 qualifying practitioner, the qualifying practitioner and the
 1371 health care clinic establishment shall notify the department on
 1372 a form furnished by the department within 10 days after such
 1373 employment. In addition, the qualifying practitioner and health
 1374 care clinic establishment shall notify the department within 10
 1375 days after any subsequent change.

1376 2. The health care clinic establishment must employ a
 1377 qualifying practitioner at each establishment.

1378 3. In addition to the remedies and penalties provided in
 1379 this part, a violation of this chapter by the health care clinic
 1380 establishment or qualifying practitioner constitutes grounds for
 1381 discipline of the qualifying practitioner by the appropriate
 1382 regulatory board.

1383 4. The purchase of prescription drugs by the health care
 1384 clinic establishment is prohibited during any period of time
 1385 when the establishment does not comply with this paragraph.

1386 5. A health care clinic establishment permit is not a
 1387 pharmacy permit or otherwise subject to chapter 465. A health
 1388 care clinic establishment that meets the criteria of a modified
 1389 Class II institutional pharmacy under s. 465.019 is not eligible
 1390 to be permitted under this paragraph.

1391 6. This paragraph does not apply to the purchase of a
 1392 prescription drug by a licensed practitioner under his or her
 1393 license.

1394 (3) A nonresident prescription drug manufacturer permit is
 1395 not required for a manufacturer to distribute a prescription

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1396 drug active pharmaceutical ingredient that it manufactures to a
 1397 prescription drug manufacturer permitted in this state ~~in~~
 1398 ~~limited quantities~~ intended for research and development and not
 1399 for resale or human use other than lawful clinical trials and
 1400 biostudies authorized and regulated by federal law. A
 1401 manufacturer claiming to be exempt from the permit requirements
 1402 of this subsection and the prescription drug manufacturer
 1403 purchasing and receiving the active pharmaceutical ingredient
 1404 shall comply with the recordkeeping requirements of s.
 1405 499.0121(6), ~~but not the requirements of s. 499.01212.~~ The
 1406 prescription drug manufacturer purchasing and receiving the
 1407 active pharmaceutical ingredient shall maintain on file a record
 1408 of the FDA registration number; if available, the out-of-state
 1409 license, permit, or registration number; and, if available, a
 1410 copy of the most current FDA inspection report, for all
 1411 manufacturers from whom they purchase active pharmaceutical
 1412 ingredients under this section. ~~The department shall define the~~
 1413 ~~term "limited quantities" by rule, and may include the allowable~~
 1414 ~~number of transactions within a given period of time and the~~
 1415 ~~amount of prescription drugs distributed into the state for~~
 1416 ~~purposes of this exemption.~~ The failure to comply with the
 1417 requirements of this subsection, or rules adopted by the
 1418 department to administer this subsection, for the purchase of
 1419 prescription drug active pharmaceutical ingredients is a
 1420 violation of s. 499.005(14), and a knowing failure is a
 1421 violation of s. 499.0051(3) ~~499.0051(4)~~.
 1422 (a) The immediate package or container of a prescription
 1423 drug active pharmaceutical ingredient distributed into the state
 1424 that is intended for research and development under this

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1425 subsection shall bear a label prominently displaying the
 1426 statement: "Caution: Research and Development Only-Not for
 1427 Manufacturing, Compounding, or Resale."
 1428 (b) A prescription drug manufacturer that obtains a
 1429 prescription drug active pharmaceutical ingredient under this
 1430 subsection for use in clinical trials and or biostudies
 1431 authorized and regulated by federal law must create and maintain
 1432 records detailing the specific clinical trials or biostudies for
 1433 which the prescription drug active pharmaceutical ingredient was
 1434 obtained.
 1435 (4) (a) A permit issued under this part is not required to
 1436 distribute a prescription drug active pharmaceutical ingredient
 1437 from an establishment located in the United States to an
 1438 establishment located in this state permitted as a prescription
 1439 drug manufacturer under this part for use by the recipient in
 1440 preparing, deriving, processing, producing, or fabricating a
 1441 prescription drug finished dosage form at the establishment in
 1442 this state where the product is received under an approved and
 1443 otherwise valid New Drug Approval Application, Abbreviated New
 1444 Drug Application, New Animal Drug Application, or Therapeutic
 1445 Biologic Application, provided that the application, active
 1446 pharmaceutical ingredient, or finished dosage form has not been
 1447 withdrawn or removed from the market in this country for public
 1448 health reasons.
 1449 1. Any distributor claiming exemption from permitting
 1450 requirements pursuant to this paragraph shall maintain a
 1451 license, permit, or registration to engage in the wholesale
 1452 distribution of prescription drugs under the laws of the state
 1453 from which the product is distributed. If the state from which

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1454 the prescription drugs are distributed does not require a
 1455 license to engage in the wholesale distribution of prescription
 1456 drugs, the distributor must be licensed as a wholesale
 1457 distributor as required by the federal act.

1458 2. Any distributor claiming exemption from permitting
 1459 requirements pursuant to this paragraph and the prescription
 1460 drug manufacturer purchasing and receiving the active
 1461 pharmaceutical ingredient shall comply with the recordkeeping
 1462 requirements of s. 499.0121(6), ~~but not the requirements of s.~~
 1463 ~~499.01212.~~

1464 (b) A permit issued under this part is not required to
 1465 distribute ~~limited quantities of~~ a prescription drug that has
 1466 not been repackaged from an establishment located in the United
 1467 States to an establishment located in this state permitted as a
 1468 prescription drug manufacturer under this part for research and
 1469 development or to a holder of a letter of exemption issued by
 1470 the department under s. 499.03(4) for research, teaching, or
 1471 testing. ~~The department shall define "limited quantities" by~~
 1472 ~~rule and may include the allowable number of transactions within~~
 1473 ~~a given period of time and the amounts of prescription drugs~~
 1474 ~~distributed into the state for purposes of this exemption.~~

1475 1. Any distributor claiming exemption from permitting
 1476 requirements pursuant to this paragraph shall maintain a
 1477 license, permit, or registration to engage in the wholesale
 1478 distribution of prescription drugs under the laws of the state
 1479 from which the product is distributed. If the state from which
 1480 the prescription drugs are distributed does not require a
 1481 license to engage in the wholesale distribution of prescription
 1482 drugs, the distributor must be licensed as a wholesale

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1483 distributor as required by the federal act.

1484 2. All purchasers and recipients of any prescription drugs
 1485 distributed pursuant to this paragraph shall ensure that the
 1486 products are not resold or used, directly or indirectly, on
 1487 humans except in lawful clinical trials and biostudies
 1488 authorized and regulated by federal law.

1489 3. Any distributor claiming exemption from permitting
 1490 requirements pursuant to this paragraph, and the purchaser and
 1491 recipient of the prescription drug, shall comply with the
 1492 recordkeeping requirements of s. 499.0121(6), ~~but not the~~
 1493 ~~requirements of s. 499.01212.~~

1494 4. The immediate package or container of any active
 1495 pharmaceutical ingredient distributed into the state that is
 1496 intended for teaching, testing, research, and development shall
 1497 bear a label prominently displaying the statement: "Caution:
 1498 Research, Teaching, or Testing Only - Not for Manufacturing,
 1499 Compounding, or Resale."

1500 (c) An out-of-state prescription drug wholesale distributor
 1501 permit is not required for an intracompany sale or transfer of a
 1502 prescription drug from an out-of-state establishment that is
 1503 duly licensed as a prescription drug wholesale distributor in
 1504 its state of residence to a licensed prescription drug wholesale
 1505 distributor in this state, if both wholesale distributors
 1506 conduct wholesale distributions of prescription drugs under the
 1507 same business name. The recordkeeping requirements of s. ~~ss-~~
 1508 ~~499.0121(6) and 499.01212~~ must be followed for such
 1509 transactions.

1510 (d) Persons receiving prescription drugs from a source
 1511 claimed to be exempt from permitting requirements under this

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1512 subsection shall maintain on file:

1513 1. A record of the FDA establishment registration number,
1514 if any;

1515 2. The resident state or federal license, registration, or
1516 permit that authorizes the source to distribute prescription
1517 drugs ~~drug wholesale distribution license, permit, or~~
1518 ~~registration number~~; and

1519 3. A copy of the most recent resident state or FDA
1520 inspection report, for all distributors and establishments from
1521 whom they purchase or receive prescription drugs under this
1522 subsection.

1523 (e) All persons claiming exemption from permitting
1524 requirements pursuant to this subsection who engage in the
1525 distribution of prescription drugs within or into the state are
1526 subject to this part, including ss. 499.005 and 499.0051, and
1527 shall make available, within 48 hours, to the department on
1528 request all records related to any prescription drugs
1529 distributed under this subsection, including those records
1530 described in s. 499.051(4), regardless of the location where the
1531 records are stored.

1532 (f) A person purchasing and receiving a prescription drug
1533 from a person claimed to be exempt from licensing requirements
1534 pursuant to this subsection shall report to the department in
1535 writing within 14 days after receiving any product that is
1536 misbranded or adulterated or that fails to meet minimum
1537 standards set forth in the official compendium or state or
1538 federal good manufacturing practices for identity, purity,
1539 potency, or sterility, regardless of whether the product is
1540 thereafter rehabilitated, quarantined, returned, or destroyed.

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1541 (g) The department may adopt rules to administer this
1542 subsection which are necessary for the protection of the public
1543 health, safety, and welfare. Failure to comply with the
1544 requirements of this subsection, or rules adopted by the
1545 department to administer this subsection, is a violation of s.
1546 499.005(14), and a knowing failure is a violation of s.
1547 499.0051(3) ~~499.0051(4)~~.

1548 (h) This subsection does not relieve any person from any
1549 requirement prescribed by law with respect to controlled
1550 substances as defined in the applicable federal and state laws.

1551 (5) A prescription drug repackager permit issued under this
1552 part is not required for a restricted prescription drug
1553 distributor permitholder that is a health care entity to
1554 repackaging prescription drugs in this state for its own use or
1555 for distribution to hospitals or other health care entities in
1556 the state for their own use, pursuant to s. 499.003(48)(a)3.
1557 ~~499.003(53)(a)3.~~, if:

1558 (a) The prescription drug distributor notifies the
1559 department, in writing, of its intention to engage in
1560 repackaging under this exemption, 30 days before engaging in the
1561 repackaging of prescription drugs at the permitted
1562 establishment;

1563 (b) The prescription drug distributor is under common
1564 control with the hospitals or other health care entities to
1565 which the prescription drug distributor is distributing
1566 prescription drugs. As used in this paragraph, "common control"
1567 means the power to direct or cause the direction of the
1568 management and policies of a person or an organization, whether
1569 by ownership of stock, voting rights, contract, or otherwise;

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1570 (c) The prescription drug distributor repackages the
 1571 prescription drugs in accordance with current state and federal
 1572 good manufacturing practices; and

1573 (d) The prescription drug distributor labels the
 1574 prescription drug it repackages in accordance with state and
 1575 federal laws and rules.

1576
 1577 The prescription drug distributor is exempt from the product
 1578 registration requirements of s. 499.015 with regard to the
 1579 prescription drugs that it repackages and distributes under this
 1580 subsection. A prescription drug distributor that repackages and
 1581 distributes prescription drugs under this subsection to a not-
 1582 for-profit rural hospital, as defined in s. 395.602, is not
 1583 required to comply with paragraph (c) or paragraph (d), but must
 1584 provide to each health care entity for which it repackages, for
 1585 each prescription drug that is repackaged and distributed, the
 1586 information required by department rule for labeling
 1587 prescription drugs. The prescription drug distributor shall also
 1588 provide the additional current packaging and label information
 1589 for the prescription drug by hard copy or by electronic means.

1590 Section 6. Section 499.012, Florida Statutes, is amended to
 1591 read:

1592 499.012 Permit application requirements.—

1593 (1) (a) A permit issued pursuant to this part may be issued
 1594 only to a natural person who is at least 18 years of age or to
 1595 an applicant that is not a natural person if each person who,
 1596 directly or indirectly, manages, controls, or oversees the
 1597 operation of that applicant is at least 18 years of age.

1598 (b) An establishment that is a place of residence may not

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1599 receive a permit and may not operate under this part.

1600 (c) A person that applies for or renews a permit to
 1601 manufacture or distribute prescription drugs may not use a name
 1602 identical to the name used by any other establishment or
 1603 licensed person authorized to purchase prescription drugs in
 1604 this state, except that a restricted drug distributor permit
 1605 issued to a health care entity will be issued in the name in
 1606 which the institutional pharmacy permit is issued and a retail
 1607 pharmacy drug wholesale distributor will be issued a permit in
 1608 the name of its retail pharmacy permit.

1609 (d) A permit for a prescription drug manufacturer,
 1610 prescription drug repackager, prescription drug wholesale
 1611 distributor, limited prescription drug veterinary wholesale
 1612 distributor, or retail pharmacy drug wholesale distributor may
 1613 not be issued to the address of a health care entity or to a
 1614 pharmacy licensed under chapter 465, except as provided in this
 1615 paragraph. The department may issue a prescription drug
 1616 manufacturer permit to an applicant at the same address as a
 1617 licensed nuclear pharmacy, which is a health care entity, even
 1618 if the nuclear pharmacy holds a special sterile compounding
 1619 permit under chapter 465, for the purpose of manufacturing
 1620 prescription drugs used in positron emission tomography or other
 1621 radiopharmaceuticals, as listed in a rule adopted by the
 1622 department pursuant to this paragraph. The purpose of this
 1623 exemption is to assure availability of state-of-the-art
 1624 pharmaceuticals that would pose a significant danger to the
 1625 public health if manufactured at a separate establishment
 1626 address from the nuclear pharmacy from which the prescription
 1627 drugs are dispensed. The department may also issue a retail

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1628 pharmacy drug wholesale distributor permit to the address of a
 1629 community pharmacy licensed under chapter 465, even if the
 1630 community pharmacy holds a special sterile compounding permit
 1631 under chapter 465, as long as the community pharmacy ~~which~~ does
 1632 not meet the definition of a closed pharmacy in s. 499.003.

1633 (e) A county or municipality may not issue an occupational
 1634 license for ~~any licensing period beginning on or after October~~
 1635 ~~1, 2003, for~~ any establishment that requires a permit pursuant
 1636 to this part, unless the establishment exhibits a current permit
 1637 issued by the department for the establishment. Upon
 1638 presentation of the requisite permit issued by the department,
 1639 an occupational license may be issued by the municipality or
 1640 county in which application is made. The department shall
 1641 furnish to local agencies responsible for issuing occupational
 1642 licenses a current list of all establishments licensed pursuant
 1643 to this part.

1644 (2) Notwithstanding subsection (6), a permitted person in
 1645 good standing may change the type of permit issued to that
 1646 person by completing a new application for the requested permit,
 1647 paying the amount of the difference in the permit fees if the
 1648 fee for the new permit is more than the fee for the original
 1649 permit, and meeting the applicable permitting conditions for the
 1650 new permit type. The new permit expires on the expiration date
 1651 of the original permit being changed; however, a new permit for
 1652 a prescription drug wholesale distributor, an out-of-state
 1653 prescription drug wholesale distributor, or a retail pharmacy
 1654 drug wholesale distributor shall expire on the expiration date
 1655 of the original permit or 1 year after the date of issuance of
 1656 the new permit, whichever is earlier. A refund may not be issued

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1657 if the fee for the new permit is less than the fee that was paid
 1658 for the original permit.

1659 (3) (a) A written application for a permit or to renew a
 1660 permit must be filed with the department on forms furnished by
 1661 the department. The department shall establish, by rule, the
 1662 form and content of the application to obtain or renew a permit.
 1663 The applicant must submit to the department with the application
 1664 a statement that swears or affirms that the information is true
 1665 and correct.

1666 (b) Upon a determination that 2 years have elapsed since
 1667 the department notified an applicant for permit, certification,
 1668 or product registration of a deficiency in the application and
 1669 that the applicant has failed to cure the deficiency, the
 1670 application shall expire. The determination regarding the 2-year
 1671 lapse of time shall be based on documentation that the
 1672 department notified the applicant of the deficiency in
 1673 accordance with s. 120.60.

1674 (c) Information submitted by an applicant on an application
 1675 required pursuant to this subsection which is a trade secret, as
 1676 defined in s. 812.081, shall be maintained by the department as
 1677 trade secret information pursuant to s. 499.051(7).

1678 (4) (a) Except for a permit for a prescription drug
 1679 wholesale distributor or an out-of-state prescription drug
 1680 wholesale distributor, an application for a permit must include:

- 1681 1. The name, full business address, and telephone number of
- 1682 the applicant;
- 1683 2. All trade or business names used by the applicant;
- 1684 3. The address, telephone numbers, and the names of contact
- 1685 persons for each facility used by the applicant for the storage,

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1686 handling, and distribution of prescription drugs;

1687 4. The type of ownership or operation, such as a

1688 partnership, corporation, or sole proprietorship; and

1689 5. The names of the owner and the operator of the

1690 establishment, including:

1691 a. If an individual, the name of the individual;

1692 b. If a partnership, the name of each partner and the name

1693 of the partnership;

1694 c. If a corporation, the name and title of each corporate

1695 officer and director, the corporate names, and the name of the

1696 state of incorporation;

1697 d. If a sole proprietorship, the full name of the sole

1698 proprietor and the name of the business entity;

1699 e. If a limited liability company, the name of each member,

1700 the name of each manager, the name of the limited liability

1701 company, and the name of the state in which the limited

1702 liability company was organized; and

1703 f. Any other relevant information that the department

1704 requires.

1705 (b) Upon approval of the application by the department and

1706 payment of the required fee, the department shall issue a permit

1707 to the applicant, if the applicant meets the requirements of

1708 this part and rules adopted under this part.

1709 (c) Any change in information required under paragraph (a)

1710 must be submitted to the department before the change occurs.

1711 (d) The department shall consider, at a minimum, the

1712 following factors in reviewing the qualifications of persons to

1713 be permitted under this part:

1714 1. The applicant's having been found guilty, regardless of

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1715 adjudication, in a court of this state or other jurisdiction, of

1716 a violation of a law that directly relates to a drug, device, or

1717 cosmetic. A plea of nolo contendere constitutes a finding of

1718 guilt for purposes of this subparagraph.

1719 2. The applicant's having been disciplined by a regulatory

1720 agency in any state for any offense that would constitute a

1721 violation of this part.

1722 3. Any felony conviction of the applicant under a federal,

1723 state, or local law;

1724 4. The applicant's past experience in manufacturing or

1725 distributing drugs, devices, or cosmetics;

1726 5. The furnishing by the applicant of false or fraudulent

1727 material in any application made in connection with

1728 manufacturing or distributing drugs, devices, or cosmetics;

1729 6. Suspension or revocation by a federal, state, or local

1730 government of any permit currently or previously held by the

1731 applicant for the manufacture or distribution of any drugs,

1732 devices, or cosmetics;

1733 7. Compliance with permitting requirements under any

1734 previously granted permits;

1735 8. Compliance with requirements to maintain or make

1736 available to the state permitting authority or to federal,

1737 state, or local law enforcement officials those records required

1738 under this section; and

1739 9. Any other factors or qualifications the department

1740 considers relevant to and consistent with the public health and

1741 safety.

1742 (5) ~~Except for a permit for a prescription drug wholesale~~

1743 ~~distributor or an out-of-state prescription drug wholesale~~

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1744 ~~distributor.~~

1745 (a) The department shall adopt rules for the biennial
1746 renewal of permits; however, the department may issue up to a 4-
1747 year permit to selected permittees notwithstanding any other
1748 provision of law. Fees for such renewal may not exceed the fee
1749 caps set forth in s. 499.041 on an annualized basis as
1750 authorized by law.

1751 (b) The department shall renew a permit upon receipt of the
1752 renewal application and renewal fee if the applicant meets the
1753 requirements established under this part and the rules adopted
1754 under this part.

1755 (c) At least 90 days before the expiration date of a
1756 permit, the department shall forward a permit renewal
1757 notification to the permittee at the mailing address of the
1758 permitted establishment on file with the department. The permit
1759 renewal notification must state conspicuously the date on which
1760 the permit for the establishment will expire and that the
1761 establishment may not operate unless the permit for the
1762 establishment is renewed timely. A permit, unless sooner
1763 suspended or revoked, automatically expires 2 years after the
1764 last day of the anniversary month in which the permit was
1765 originally issued.

1766 (d) A permit issued under this part may be renewed by
1767 making application for renewal on forms furnished by the
1768 department and paying the appropriate fees.

1769 1. If a prescription drug wholesale distributor or an out-
1770 of-state prescription drug wholesale distributor renewal
1771 application and fee are submitted and postmarked later than 45
1772 days before the expiration date of the permit, the permit may be

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1773 renewed only upon payment of a late renewal fee of \$100, plus
1774 the required renewal fee.

1775 2. If any other a renewal application and fee are submitted
1776 and postmarked after the expiration date of the permit, the
1777 permit may be renewed only upon payment of a late renewal
1778 delinquent fee of \$100, plus the required renewal fee, not later
1779 than 60 days after the expiration date.

1780 3. A permittee who submits a renewal application in
1781 accordance with this paragraph may continue to operate under its
1782 permit, unless the permit is suspended or revoked, until final
1783 disposition of the renewal application.

1784 4. ~~(d)~~ Failure to renew a permit in accordance with this
1785 section precludes any future renewal of that permit. If a permit
1786 issued pursuant to this part has expired and cannot be renewed,
1787 before an establishment may engage in activities that require a
1788 permit under this part, the establishment must submit an
1789 application for a new permit, pay the applicable application
1790 fee, the initial permit fee, and all applicable penalties, and
1791 be issued a new permit by the department.

1792 (6) A permit issued by the department is nontransferable.
1793 Each permit is valid only for the person or governmental unit to
1794 which it is issued and is not subject to sale, assignment, or
1795 other transfer, voluntarily or involuntarily; nor is a permit
1796 valid for any establishment other than the establishment for
1797 which it was originally issued.

1798 (a) A person permitted under this part must notify the
1799 department before making a change of address. The department
1800 shall set a change of location fee not to exceed \$100.

1801 (b)1. An application for a new permit is required when a

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1802 majority of the ownership or controlling interest of a permitted
 1803 establishment is transferred or assigned or when a lessee agrees
 1804 to undertake or provide services to the extent that legal
 1805 liability for operation of the establishment will rest with the
 1806 lessee. The application for the new permit must be made before
 1807 the date of the sale, transfer, assignment, or lease.

1808 2. A permittee that is authorized to distribute
 1809 prescription drugs may transfer such drugs to the new owner or
 1810 lessee under subparagraph 1. only after the new owner or lessee
 1811 has been approved for a permit to distribute prescription drugs.

1812 (c) If an establishment permitted under this part closes,
 1813 the owner must notify the department in writing before the
 1814 effective date of closure and must:

1815 1. Return the permit to the department;

1816 2. If the permittee is authorized to distribute
 1817 prescription drugs, indicate the disposition of such drugs,
 1818 including the name, address, and inventory, and provide the name
 1819 and address of a person to contact regarding access to records
 1820 that are required to be maintained under this part. Transfer of
 1821 ownership of prescription drugs may be made only to persons
 1822 authorized to possess prescription drugs under this part.

1823

1824 The department may revoke the permit of any person that fails to
 1825 comply with the requirements of this subsection.

1826 (7) A permit must be posted in a conspicuous place on the
 1827 licensed premises.

1828 (8) An application for a permit or to renew a permit for a
 1829 prescription drug wholesale distributor or an out-of-state
 1830 prescription drug wholesale distributor submitted to the

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1831 department must include:

1832 (a) The name, full business address, and telephone number
 1833 of the applicant.

1834 (b) All trade or business names used by the applicant.

1835 (c) The address, telephone numbers, and the names of
 1836 contact persons for each facility used by the applicant for the
 1837 storage, handling, and distribution of prescription drugs.

1838 (d) The type of ownership or operation, such as a
 1839 partnership, corporation, or sole proprietorship.

1840 (e) The names of the owner and the operator of the
 1841 establishment, including:

1842 1. If an individual, the name of the individual.

1843 2. If a partnership, the name of each partner and the name
 1844 of the partnership.

1845 3. If a corporation:

1846 a. The name, address, and title of each corporate officer
 1847 and director.

1848 b. The name and address of the corporation, resident agent
 1849 of the corporation, the resident agent's address, and the
 1850 corporation's state of incorporation.

1851 c. The name and address of each shareholder of the
 1852 corporation that owns 5 percent or more of the outstanding stock
 1853 of the corporation.

1854 4. If a sole proprietorship, the full name of the sole
 1855 proprietor and the name of the business entity.

1856 5. If a limited liability company:

1857 a. The name and address of each member.

1858 b. The name and address of each manager.

1859 c. The name and address of the limited liability company,

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1860 the resident agent of the limited liability company, and the
1861 name of the state in which the limited liability company was
1862 organized.

1863 (f) If applicable, the name and address of each affiliate
1864 ~~of member of the affiliated group of which the applicant is a~~
1865 ~~member.~~

1866 (g) ~~1-~~ The applicant's gross annual receipts attributable to
1867 prescription drug wholesale distribution activities for the
1868 previous tax year. ~~For an application for a new permit, the~~
1869 ~~estimated annual dollar volume of prescription drug sales of the~~
1870 ~~applicant, the estimated annual percentage of the applicant's~~
1871 ~~total company sales that are prescription drugs, the applicant's~~
1872 ~~estimated annual total dollar volume of purchases of~~
1873 ~~prescription drugs, and the applicant's estimated annual total~~
1874 ~~dollar volume of prescription drug purchases directly from~~
1875 ~~manufacturers.~~

1876 2. ~~For an application to renew a permit, the total dollar~~
1877 ~~volume of prescription drug sales in the previous year, the~~
1878 ~~total dollar volume of prescription drug sales made in the~~
1879 ~~previous 6 months, the percentage of total company sales that~~
1880 ~~were prescription drugs in the previous year, the total dollar~~
1881 ~~volume of purchases of prescription drugs in the previous year,~~
1882 ~~and the total dollar volume of prescription drug purchases~~
1883 ~~directly from manufacturers in the previous year.~~

1884 ~~Such portions of the information required pursuant to this~~
1885 ~~paragraph which are a trade secret, as defined in s. 812.081,~~
1886 ~~shall be maintained by the department as trade secret~~
1887 ~~information is required to be maintained under s. 499.051.~~

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1889 (h) The tax year of the applicant.

1890 (i) A copy of the deed for the property on which
1891 applicant's establishment is located, if the establishment is
1892 owned by the applicant, or a copy of the applicant's lease for
1893 the property on which applicant's establishment is located that
1894 has an original term of not less than 1 calendar year, if the
1895 establishment is not owned by the applicant.

1896 (j) A list of all licenses and permits issued to the
1897 applicant by any other state which authorize the applicant to
1898 purchase or possess prescription drugs.

1899 (k) The name of the manager of the establishment that is
1900 applying for the permit or to renew the permit, the next four
1901 highest ranking employees responsible for prescription drug
1902 wholesale operations for the establishment, and the name of all
1903 affiliated parties for the establishment, together with the
1904 personal information statement and fingerprints required
1905 pursuant to subsection (9) for each of such persons.

1906 (l) The name of each of the applicant's designated
1907 representatives as required by subsection (15) ~~(16)~~, together
1908 with the personal information statement and fingerprints
1909 required pursuant to subsection (9) for each such person.

1910 (m) Evidence of a surety bond in this state or any other
1911 state in the United States in the amount of \$100,000. If the
1912 annual gross receipts of the applicant's previous tax year is
1913 \$10 million or less, evidence of a surety bond in the amount of
1914 \$25,000. The specific language of the surety bond must include
1915 the State of Florida as a beneficiary, payable to the
1916 Professional Regulation Trust Fund. In lieu of the surety bond,
1917 the applicant may provide other equivalent security such as an

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1918 irrevocable letter of credit or a deposit in a trust account or
 1919 financial institution payable to the Professional Regulation
 1920 Trust Fund. The purpose of the bond or other security is to
 1921 secure payment of any administrative penalties imposed by the
 1922 department and any fees and costs incurred by the department
 1923 regarding that permit which are authorized under state law and
 1924 which the permittee fails to pay 30 days after the fine or costs
 1925 become final. The department may make a claim against such bond
 1926 or security until 1 year after the permittee's license ceases to
 1927 be valid or until 60 days after any administrative or legal
 1928 proceeding authorized in this part which involves the permittee
 1929 is concluded, including any appeal, whichever occurs later. For
 1930 an applicant that is a secondary wholesale distributor, each of
 1931 the following:

1932 1. A personal background information statement containing
 1933 the background information and fingerprints required pursuant to
 1934 subsection (9) for each person named in the applicant's response
 1935 to paragraphs (k) and (l) and for each affiliated party of the
 1936 applicant.

1937 2. If any of the five largest shareholders of the
 1938 corporation seeking the permit is a corporation, the name,
 1939 address, and title of each corporate officer and director of
 1940 each such corporation; the name and address of such corporation;
 1941 the name of such corporation's resident agent, such
 1942 corporation's resident agent's address, and such corporation's
 1943 state of its incorporation; and the name and address of each
 1944 shareholder of such corporation that owns 5 percent or more of
 1945 the stock of such corporation.

1946 3. The name and address of all financial institutions in

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1947 which the applicant has an account which is used to pay for the
 1948 operation of the establishment or to pay for drugs purchased for
 1949 the establishment, together with the names of all persons that
 1950 are authorized signatories on such accounts. The portions of the
 1951 information required pursuant to this subparagraph which are a
 1952 trade secret, as defined in s. 812.081, shall be maintained by
 1953 the department as trade secret information is required to be
 1954 maintained under s. 499.051.

1955 4. The sources of all funds and the amounts of such funds
 1956 used to purchase or finance purchases of prescription drugs or
 1957 to finance the premises on which the establishment is to be
 1958 located.

1959 5. If any of the funds identified in subparagraph 4. were
 1960 borrowed, copies of all promissory notes or loans used to obtain
 1961 such funds.

1962 (n) For establishments used in wholesale distribution,
 1963 proof of an inspection conducted by the department, the United
 1964 States Food and Drug Administration, or another governmental
 1965 entity charged with the regulation of good manufacturing
 1966 practices related to wholesale distribution of prescription
 1967 drugs, within timeframes set forth by the department in
 1968 departmental rules, which demonstrates substantial compliance
 1969 with current good manufacturing practices applicable to
 1970 wholesale distribution of prescription drugs. The department may
 1971 recognize another state's inspection of a wholesale distributor
 1972 located in that state if such state's laws are deemed to be
 1973 substantially equivalent to the law of this state by the
 1974 department. The department may accept an inspection by a third-
 1975 party accreditation or inspection service which meets the

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1976 criteria set forth in department rule.

1977 ~~(o)(A)~~ Any other relevant information that the department
1978 requires, including, but not limited to, any information related
1979 to whether the applicant satisfies the definition of a primary
1980 ~~wholesale distributor or a secondary wholesale distributor.~~

1981 ~~(p)(e)~~ Documentation of the credentialing policies and
1982 procedures required by s. 499.0121(15).

1983 (9) (a) Each person required by subsection (8) or subsection
1984 (15) to provide a personal information statement and
1985 fingerprints shall provide the following information to the
1986 department on forms prescribed by the department:

1987 1. The person's places of residence for the past 7 years.

1988 2. The person's date and place of birth.

1989 3. The person's occupations, positions of employment, and
1990 offices held during the past 7 years.

1991 4. The principal business and address of any business,
1992 corporation, or other organization in which each such office of
1993 the person was held or in which each such occupation or position
1994 of employment was carried on.

1995 5. Whether the person has been, during the past 7 years,
1996 the subject of any proceeding for the revocation of any license
1997 and, if so, the nature of the proceeding and the disposition of
1998 the proceeding.

1999 6. Whether, during the past 7 years, the person has been
2000 enjoined, temporarily or permanently, by a court of competent
2001 jurisdiction from violating any federal or state law regulating
2002 the possession, control, or distribution of prescription drugs,
2003 together with details concerning any such event.

2004 7. A description of any involvement by the person with any

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2005 business, including any investments, other than the ownership of
2006 stock in a publicly traded company or mutual fund, during the
2007 past 4 7 years, which manufactured, administered, prescribed,
2008 distributed, or stored pharmaceutical products and any lawsuits
2009 in which such businesses were named as a party.

2010 8. A description of any felony criminal offense of which
2011 the person, as an adult, was found guilty, regardless of whether
2012 adjudication of guilt was withheld or whether the person pled
2013 guilty or nolo contendere. A criminal offense committed in
2014 another jurisdiction which would have been a felony in this
2015 state must be reported. If the person indicates that a criminal
2016 conviction is under appeal and submits a copy of the notice of
2017 appeal of that criminal offense, the applicant must, within 15
2018 days after the disposition of the appeal, submit to the
2019 department a copy of the final written order of disposition.

2020 9. A photograph of the person taken in the previous 180 ~~30~~
2021 days.

2022 10. A set of fingerprints for the person on a form and
2023 under procedures specified by the department, together with
2024 payment of an amount equal to the costs incurred by the
2025 department for the criminal record check of the person.

2026 11. The name, address, occupation, and date and place of
2027 birth for each member of the person's immediate family who is 18
2028 years of age or older. As used in this subparagraph, the term
2029 "member of the person's immediate family" includes the person's
2030 spouse, children, parents, siblings, the spouses of the person's
2031 children, and the spouses of the person's siblings.

2032 12. Any other relevant information that the department
2033 requires.

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2034 (b) The information required pursuant to paragraph (a)
 2035 shall be provided under oath.

2036 (c) The department shall submit the fingerprints provided
 2037 by a person for initial licensure to the Department of Law
 2038 Enforcement for a statewide criminal record check and for
 2039 forwarding to the Federal Bureau of Investigation for a national
 2040 criminal record check of the person. The department shall submit
 2041 the fingerprints provided by a person as a part of a renewal
 2042 application to the Department of Law Enforcement for a statewide
 2043 criminal record check, and for forwarding to the Federal Bureau
 2044 of Investigation for a national criminal record check, for the
 2045 initial renewal of a permit after January 1, 2004; for any
 2046 subsequent renewal of a permit, the department shall submit the
 2047 required information for a statewide and national criminal
 2048 record check of the person. Any person who as a part of an
 2049 initial permit application or initial permit renewal after
 2050 January 1, 2004, submits to the department a set of fingerprints
 2051 required for the criminal record check required in this
 2052 paragraph ~~are shall~~ not be required to provide a subsequent set
 2053 of fingerprints for a criminal record check to the department,
 2054 if the person has undergone a criminal record check as a
 2055 condition of the issuance of an initial permit or the initial
 2056 renewal of a permit of an applicant after January 1, 2004. The
 2057 department is authorized to contract with private vendors, or
 2058 enter into interagency agreements, to collect electronic
 2059 fingerprints where fingerprints are required for registration,
 2060 certification, or the licensure process or where criminal
 2061 history record checks are required.

2062 (d) For purposes of applying for renewal of a permit under

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2063 subsection (8) or certification under subsection (16), a person
 2064 may submit the following in lieu of satisfying the requirements
 2065 of paragraphs (a), (b), and (c):

2066 1. A photograph of the individual taken within 180 days;
 2067 and

2068 2. A copy of the personal information statement form most
 2069 recently submitted to the department and a certification under
 2070 oath, on a form specified by the department, that the individual
 2071 has reviewed the previously submitted personal information
 2072 statement form and that the information contained therein
 2073 remains unchanged.

2074 (10) The department may deny an application for a permit or
 2075 refuse to renew a permit for a prescription drug wholesale
 2076 distributor or an out-of-state prescription drug wholesale
 2077 distributor if:

2078 (a) The applicant has not met the requirements for the
 2079 permit.

2080 (b) The management, officers, or directors of the applicant
 2081 or any affiliated party are found by the department to be
 2082 incompetent or untrustworthy.

2083 (c) The applicant is so lacking in experience in managing a
 2084 wholesale distributor as to make the issuance of the proposed
 2085 permit hazardous to the public health.

2086 (d) The applicant is so lacking in experience in managing a
 2087 wholesale distributor as to jeopardize the reasonable promise of
 2088 successful operation of the wholesale distributor.

2089 (e) The applicant is lacking in experience in the
 2090 distribution of prescription drugs.

2091 (f) The applicant's past experience in manufacturing or

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2092 distributing prescription drugs indicates that the applicant
2093 poses a public health risk.

2094 (g) The applicant is affiliated directly or indirectly
2095 through ownership, control, or other business relations, with
2096 any person or persons whose business operations are or have been
2097 detrimental to the public health.

2098 (h) The applicant, or any affiliated party, has been found
2099 guilty of or has pleaded guilty or nolo contendere to any felony
2100 or crime punishable by imprisonment for 1 year or more under the
2101 laws of the United States, any state, or any other country,
2102 regardless of whether adjudication of guilt was withheld.

2103 (i) The applicant or any affiliated party has been charged
2104 with a felony in a state or federal court and the disposition of
2105 that charge is pending during the application review or renewal
2106 review period.

2107 (j) The applicant has furnished false or fraudulent
2108 information or material in any application made in this state or
2109 any other state in connection with obtaining a permit or license
2110 to manufacture or distribute drugs, devices, or cosmetics.

2111 (k) That a federal, state, or local government permit
2112 currently or previously held by the applicant, or any affiliated
2113 party, for the manufacture or distribution of any drugs,
2114 devices, or cosmetics has been disciplined, suspended, or
2115 revoked and has not been reinstated.

2116 (l) The applicant does not possess the financial or
2117 physical resources to operate in compliance with the permit
2118 being sought, this chapter, and the rules adopted under this
2119 chapter.

2120 (m) The applicant or any affiliated party receives,

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2121 directly or indirectly, financial support and assistance from a
2122 person who was an affiliated party of a permittee whose permit
2123 was subject to discipline or was suspended or revoked, other
2124 than through the ownership of stock in a publicly traded company
2125 or a mutual fund.

2126 (n) The applicant or any affiliated party receives,
2127 directly or indirectly, financial support and assistance from a
2128 person who has been found guilty of any violation of this part
2129 or chapter 465, chapter 501, or chapter 893, any rules adopted
2130 under this part or those chapters, any federal or state drug
2131 law, or any felony where the underlying facts related to drugs,
2132 regardless of whether the person has been pardoned, had her or
2133 his civil rights restored, or had adjudication withheld, other
2134 than through the ownership of stock in a publicly traded company
2135 or a mutual fund.

2136 (o) The applicant for renewal of a permit under s.
2137 499.01(2)(e) or (f) ~~499.01(2)(d) or (e)~~ has not actively engaged
2138 in the wholesale distribution of prescription drugs, as
2139 demonstrated by the regular and systematic distribution of
2140 prescription drugs throughout the year as evidenced by not fewer
2141 than 12 wholesale distributions in the previous year and not
2142 fewer than three wholesale distributions in the previous 6
2143 months.

2144 (p) Information obtained in response to s. 499.01(2)(e) or
2145 (f) ~~499.01(2)(d) or (e)~~ demonstrates it would not be in the best
2146 interest of the public health, safety, and welfare to issue a
2147 permit.

2148 (q) The applicant does not possess the financial standing
2149 and business experience for the successful operation of the

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2150 applicant.

2151 (r) The applicant or any affiliated party has failed to
 2152 comply with the requirements for manufacturing or distributing
 2153 prescription drugs under this part, similar federal laws,
 2154 similar laws in other states, or the rules adopted under such
 2155 laws.

2156 (11) Upon approval of the application by the department and
 2157 payment of the required fee, the department shall issue or renew
 2158 a prescription drug wholesale distributor or an out-of-state
 2159 prescription drug wholesale distributor permit to the applicant.

2160 ~~(12) For a permit for a prescription drug wholesale
 2161 distributor or an out of state prescription drug wholesale
 2162 distributor:~~

2163 ~~(a) The department shall adopt rules for the annual renewal
 2164 of permits. At least 90 days before the expiration of a permit,
 2165 the department shall forward a permit renewal notification and
 2166 renewal application to the prescription drug wholesale
 2167 distributor or out-of-state prescription drug wholesale
 2168 distributor at the mailing address of the permitted
 2169 establishment on file with the department. The permit renewal
 2170 notification must state conspicuously the date on which the
 2171 permit for the establishment will expire and that the
 2172 establishment may not operate unless the permit for the
 2173 establishment is renewed timely.~~

2174 ~~(b) A permit, unless sooner suspended or revoked,
 2175 automatically expires 1 year after the last day of the
 2176 anniversary month in which the permit was originally issued. A
 2177 permit may be renewed by making application for renewal on forms
 2178 furnished by the department and paying the appropriate fees. If~~

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2179 ~~a renewal application and fee are submitted and postmarked after
 2180 45 days prior to the expiration date of the permit, the permit
 2181 may be renewed only upon payment of a late renewal fee of \$100,
 2182 plus the required renewal fee. A permittee that has submitted a
 2183 renewal application in accordance with this paragraph may
 2184 continue to operate under its permit, unless the permit is
 2185 suspended or revoked, until final disposition of the renewal
 2186 application.~~

2187 ~~(c) Failure to renew a permit in accordance with this
 2188 section precludes any future renewal of that permit. If a permit
 2189 issued pursuant to this section has expired and cannot be
 2190 renewed, before an establishment may engage in activities that
 2191 require a permit under this part, the establishment must submit
 2192 an application for a new permit; pay the applicable application
 2193 fee, initial permit fee, and all applicable penalties; and be
 2194 issued a new permit by the department.~~

2195 (12)-(13) A person that engages in wholesale distribution of
 2196 prescription drugs in this state must have a wholesale
 2197 distributor's permit issued by the department, except as noted
 2198 in this section. Each establishment must be separately permitted
 2199 except as noted in this subsection.

2200 (a) A separate establishment permit is not required when a
 2201 permitted prescription drug wholesale distributor consigns a
 2202 prescription drug to a pharmacy that is permitted under chapter
 2203 465 and located in this state, provided that:

2204 1. The consignor wholesale distributor notifies the
 2205 department in writing of the contract to consign prescription
 2206 drugs to a pharmacy along with the identity and location of each
 2207 consignee pharmacy;

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2208 2. The pharmacy maintains its permit under chapter 465;

2209 3. The consignor wholesale distributor, which has no legal

2210 authority to dispense prescription drugs, complies with all

2211 wholesale distribution requirements of s. ss. 499.0121 and

2212 ~~499.01212~~ with respect to the consigned drugs and maintains

2213 records documenting the transfer of title or other completion of

2214 the wholesale distribution of the consigned prescription drugs;

2215 4. The distribution of the prescription drug is otherwise

2216 lawful under this chapter and other applicable law;

2217 5. Open packages containing prescription drugs within a

2218 pharmacy are the responsibility of the pharmacy, regardless of

2219 how the drugs are titled; and

2220 6. The pharmacy dispenses the consigned prescription drug

2221 in accordance with the limitations of its permit under chapter

2222 465 or returns the consigned prescription drug to the consignor

2223 wholesale distributor. In addition, a person who holds title to

2224 prescription drugs may transfer the drugs to a person permitted

2225 or licensed to handle the reverse distribution or destruction of

2226 drugs. Any other distribution by and means of the consigned

2227 prescription drug by any person, not limited to the consignor

2228 wholesale distributor or consignee pharmacy, to any other person

2229 is prohibited.

2230 (b) A wholesale distributor's permit is not required for

2231 the one-time transfer of title of a pharmacy's lawfully acquired

2232 prescription drug inventory by a pharmacy with a valid permit

2233 issued under chapter 465 to a consignor prescription drug

2234 wholesale distributor, permitted under this chapter, in

2235 accordance with a written consignment agreement between the

2236 pharmacy and that wholesale distributor if the permitted

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2237 pharmacy and the permitted prescription drug wholesale

2238 distributor comply with all of the provisions of paragraph (a)

2239 and the prescription drugs continue to be within the permitted

2240 pharmacy's inventory for dispensing in accordance with the

2241 limitations of the pharmacy permit under chapter 465. A

2242 consignor drug wholesale distributor may not use the pharmacy as

2243 a wholesale distributor through which it distributes the

2244 prescription drugs to other pharmacies. Nothing in this section

2245 is intended to prevent a wholesale distributor from obtaining

2246 this inventory in the event of nonpayment by the pharmacy.

2247 (c) A separate establishment permit is not required when a

2248 permitted prescription drug wholesale distributor operates

2249 temporary transit storage facilities for the sole purpose of

2250 storage, for up to 16 hours, of a delivery of prescription drugs

2251 when the wholesale distributor was temporarily unable to

2252 complete the delivery to the recipient.

2253 (d) The department shall require information from each

2254 wholesale distributor as part of the permit and renewal of such

2255 permit, as required under this section.

2256 (13)~~(14)~~ Personnel employed in wholesale distribution must

2257 have appropriate education and experience to enable them to

2258 perform their duties in compliance with state permitting

2259 requirements.

2260 (14)~~(15)~~ The name of a permittee or establishment on a

2261 prescription drug wholesale distributor permit or an out-of-

2262 state prescription drug wholesale distributor permit may not

2263 include any indicia of attainment of any educational degree, any

2264 indicia that the permittee or establishment possesses a

2265 professional license, or any name or abbreviation that the

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2266 department determines is likely to cause confusion or mistake or
 2267 that the department determines is deceptive, including that of
 2268 any other entity authorized to purchase prescription drugs.
 2269 ~~(15)(16)~~ (a) Each establishment that is issued an initial or
 2270 renewal permit as a prescription drug wholesale distributor or
 2271 an out-of-state prescription drug wholesale distributor must
 2272 designate in writing to the department at least one natural
 2273 person to serve as the designated representative of the
 2274 wholesale distributor. Such person must have an active
 2275 certification as a designated representative from the
 2276 department.
 2277 (b) To be certified as a designated representative, a
 2278 natural person must:
 2279 1. Submit an application on a form furnished by the
 2280 department and pay the appropriate fees.
 2281 2. Be at least 18 years of age.
 2282 3. Have at least 2 years of verifiable full-time:
 2283 a. Work experience in a pharmacy licensed in this state or
 2284 another state, where the person's responsibilities included, but
 2285 were not limited to, recordkeeping for prescription drugs;
 2286 b. Managerial experience with a prescription drug wholesale
 2287 distributor licensed in this state or in another state; or
 2288 c. Managerial experience with the United States Armed
 2289 Forces, where the person's responsibilities included, but were
 2290 not limited to, recordkeeping, warehousing, distributing, or
 2291 other logistics services pertaining to prescription drugs.
 2292 4. Receive a passing score of at least 75 percent on an
 2293 examination given by the department regarding federal laws
 2294 governing distribution of prescription drugs and this part and

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2295 the rules adopted by the department governing the wholesale
 2296 distribution of prescription drugs. This requirement shall be
 2297 effective 1 year after the results of the initial examination
 2298 are mailed to the persons that took the examination. The
 2299 department shall offer such examinations at least four times
 2300 each calendar year.
 2301 5. Provide the department with a personal information
 2302 statement and fingerprints pursuant to subsection (9).
 2303 (c) The department may deny an application for
 2304 certification as a designated representative or may suspend or
 2305 revoke a certification of a designated representative pursuant
 2306 to s. 499.067.
 2307 (d) A designated representative:
 2308 1. Must be actively involved in and aware of the actual
 2309 daily operation of the wholesale distributor.
 2310 2. Must be employed full time in a managerial position by
 2311 the wholesale distributor.
 2312 3. Must be physically present at the establishment during
 2313 normal business hours, except for time periods when absent due
 2314 to illness, family illness or death, scheduled vacation, or
 2315 other authorized absence.
 2316 4. May serve as a designated representative for only one
 2317 wholesale distributor at any one time.
 2318 (e) A wholesale distributor must notify the department when
 2319 a designated representative leaves the employ of the wholesale
 2320 distributor. Such notice must be provided to the department
 2321 within 10 business days after the last day of designated
 2322 representative's employment with the wholesale distributor.
 2323 (f) A wholesale distributor may not operate under a

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2324 prescription drug wholesale distributor permit or an out-of-
 2325 state prescription drug wholesale distributor permit for more
 2326 than 10 business days after the designated representative leaves
 2327 the employ of the wholesale distributor, unless the wholesale
 2328 distributor employs another designated representative and
 2329 notifies the department within 10 business days of the identity
 2330 of the new designated representative.

2331 Section 7. Section 499.01201, Florida Statutes, is amended
 2332 to read:

2333 499.01201 Agency for Health Care Administration review and
 2334 use of statute and rule violation or compliance data.—

2335 Notwithstanding any other provision ~~provisions~~ of law ~~to the~~
 2336 ~~contrary~~, the Agency for Health Care Administration may not:

2337 (1) Review or use any violation or alleged violation of s.
 2338 499.0121(6) ~~or s. 499.01212~~, or any rules adopted under that
 2339 section ~~these sections~~, as a ground for denying or withholding
 2340 any payment of a Medicaid reimbursement to a pharmacy licensed
 2341 under chapter 465; or

2342 (2) Review or use compliance with s. 499.0121(6) ~~or s.~~
 2343 ~~499.01212~~, or any rules adopted under that section ~~these~~
 2344 ~~sections~~, as the subject of any audit of Medicaid-related
 2345 records held by a pharmacy licensed under chapter 465.

2346 Section 8. Paragraph (d) of subsection (4) and subsection
 2347 (6) of section 499.0121, Florida Statutes, are amended to read:

2348 499.0121 Storage and handling of prescription drugs;
 2349 recordkeeping.—The department shall adopt rules to implement
 2350 this section as necessary to protect the public health, safety,
 2351 and welfare. Such rules shall include, but not be limited to,
 2352 requirements for the storage and handling of prescription drugs

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2353 and for the establishment and maintenance of prescription drug
 2354 distribution records.

2355 (4) EXAMINATION OF MATERIALS AND RECORDS.—

2356 (d) Upon receipt, a wholesale distributor must review
 2357 records required under this section for the acquisition of
 2358 prescription drugs for accuracy and completeness, considering
 2359 the total facts and circumstances surrounding the transactions
 2360 and the wholesale distributors involved. ~~This includes~~
 2361 ~~authenticating each transaction listed on a pedigree paper, as~~
 2362 ~~defined in s. 499.003(37).~~

2363 (6) RECORDKEEPING.—The department shall adopt rules that
 2364 require keeping such records of prescription drugs, including
 2365 active pharmaceutical ingredients, as are necessary for the
 2366 protection of the public health.

2367 (a) Wholesale Distributors of prescription drugs and active
 2368 pharmaceutical ingredients must establish and maintain
 2369 inventories and records of all transactions regarding the
 2370 receipt and distribution or other disposition of prescription
 2371 drugs and active pharmaceutical ingredients. These records must
 2372 provide a complete audit trail from receipt to sale or other
 2373 disposition, be readily retrievable for inspection, and include,
 2374 at a minimum, the following information:

2375 1. The source of the prescription drugs or active
 2376 pharmaceutical ingredients, including the name and principal
 2377 address of the seller or transferor, and the address of the
 2378 location from which the prescription drugs were shipped;

2379 2. The name, principal address, and state license permit or
 2380 registration number of the person authorized to purchase
 2381 prescription drugs or active pharmaceutical ingredients;

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2382 3. The name, strength, dosage form, and quantity of the
 2383 prescription drugs received and distributed or disposed of;
 2384 4. The dates of receipt and distribution or other
 2385 disposition of the prescription drugs or active pharmaceutical
 2386 ingredients; and
 2387 5. Any financial documentation supporting the transaction.
 2388 (b) Inventories and records must be made available for
 2389 inspection and photocopying by authorized federal, state, or
 2390 local officials for a period of 2 years following disposition of
 2391 the drugs or 3 years after the creation of the records,
 2392 whichever period is longer.
 2393 (c) Records described in this section that are kept at the
 2394 inspection site or that can be immediately retrieved by computer
 2395 or other electronic means must be readily available for
 2396 authorized inspection during the retention period. Records that
 2397 are kept at a central location outside of this state and that
 2398 are not electronically retrievable must be made available for
 2399 inspection within 2 working days after a request by an
 2400 authorized official of a federal, state, or local law
 2401 enforcement agency. Records that are maintained at a central
 2402 location within this state must be maintained at an
 2403 establishment that is permitted pursuant to this part and must
 2404 be readily available.
 2405 (d) Each manufacturer or repackager of medical devices,
 2406 over-the-counter drugs, or cosmetics must maintain records that
 2407 include the name and principal address of the seller or
 2408 transferor of the product, the address of the location from
 2409 which the product was shipped, the date of the transaction, the
 2410 name and quantity of the product involved, and the name and

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2411 principal address of the person who purchased the product.
 2412 ~~(e) When pedigree papers are required by this part, a~~
 2413 ~~wholesale distributor must maintain the pedigree papers separate~~
 2414 ~~and distinct from other records required under this part.~~
 2415 Section 9. Subsection (4) of section 499.015, Florida
 2416 Statutes, is amended to read:
 2417 499.015 Registration of drugs, devices, and cosmetics;
 2418 issuance of certificates of free sale.—
 2419 (4) Unless a registration is renewed, it expires 2 years
 2420 after the last day of the month in which it was issued. Any
 2421 product registration issued or renewed on or after July 1, 2016,
 2422 shall expire on the same date as the manufacturer or repackager
 2423 permit of the person seeking to register the product. If the
 2424 first product registration issued to a person on or after July
 2425 1, 2016, expires less than 366 days after issuance, the fee for
 2426 product registration shall be \$15. If the first product
 2427 registration issued to a person on or after July 1, 2016,
 2428 expires more than 365 days after issuance, the fee for product
 2429 registration shall be \$30. The department may issue a stop-sale
 2430 notice or order against a person that is subject to the
 2431 requirements of this section and that fails to comply with this
 2432 section within 31 days after the date the registration expires.
 2433 The notice or order shall prohibit such person from selling or
 2434 causing to be sold any drugs, devices, or cosmetics covered by
 2435 this part until he or she complies with the requirements of this
 2436 section.
 2437 Section 10. Subsection (1) of section 499.03, Florida
 2438 Statutes, is amended to read:
 2439 499.03 Possession of certain drugs without prescriptions

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2440 unlawful; exemptions and exceptions.-

2441 (1) A person may not possess, or possess with intent to
2442 sell, dispense, or deliver, any habit-forming, toxic, harmful,
2443 or new drug subject to s. 499.003(32) ~~499.003(33)~~, or
2444 prescription drug as defined in s. 499.003(40) ~~499.003(43)~~,
2445 unless the possession of the drug has been obtained by a valid
2446 prescription of a practitioner licensed by law to prescribe the
2447 drug. However, this section does not apply to the delivery of
2448 such drugs to persons included in any of the classes named in
2449 this subsection, or to the agents or employees of such persons,
2450 for use in the usual course of their businesses or practices or
2451 in the performance of their official duties, as the case may be;
2452 nor does this section apply to the possession of such drugs by
2453 those persons or their agents or employees for such use:

2454 (a) A licensed pharmacist or any person under the licensed
2455 pharmacist's supervision while acting within the scope of the
2456 licensed pharmacist's practice;

2457 (b) A licensed practitioner authorized by law to prescribe
2458 prescription drugs or any person under the licensed
2459 practitioner's supervision while acting within the scope of the
2460 licensed practitioner's practice;

2461 (c) A qualified person who uses prescription drugs for
2462 lawful research, teaching, or testing, and not for resale;

2463 (d) A licensed hospital or other institution that procures
2464 such drugs for lawful administration or dispensing by
2465 practitioners;

2466 (e) An officer or employee of a federal, state, or local
2467 government; or

2468 (f) A person that holds a valid permit issued by the

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2469 department pursuant to this part which authorizes that person to
2470 possess prescription drugs.

2471 Section 11. Paragraphs (i) through (p) of subsection (1) of
2472 section 499.05, Florida Statutes, are amended to read:

2473 499.05 Rules.-

2474 (1) The department shall adopt rules to implement and
2475 enforce this chapter with respect to:

2476 (i) Additional conditions that qualify as an emergency
2477 medical reason under s. 499.003(48)(b)2. ~~499.003(53)(b)2.~~ or s.
2478 499.82.

2479 ~~(j) Procedures and forms relating to the pedigree paper
2480 requirement of s. 499.01212.~~

2481 (j)(k) The protection of the public health, safety, and
2482 welfare regarding good manufacturing practices that
2483 manufacturers and repackagers must follow to ensure the safety
2484 of the products.

2485 (k)(l) Information required from each retail establishment
2486 pursuant to s. 499.012(3) or s. 499.83(2)(c), including
2487 requirements for prescriptions or orders.

2488 (l)(m) The recordkeeping, storage, and handling with
2489 respect to each of the distributions of prescription drugs
2490 specified in s. 499.003(48)(a)-(v) ~~499.003(53)(a)-(d)~~ or s.
2491 499.82(14).

2492 ~~(n) Alternatives to compliance with s. 499.01212 for a
2493 prescription drug in the inventory of a permitted prescription
2494 drug wholesale distributor as of June 30, 2006, and the return
2495 of a prescription drug purchased prior to July 1, 2006. The
2496 department may specify time limits for such alternatives.~~

2497 (m)(o) Wholesale distributor reporting requirements of s.

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2498 499.0121(14).

2499 ~~(n)(p)~~ Wholesale distributor credentialing and distribution
2500 requirements of s. 499.0121(15).

2501 Section 12. Subsection (7) of section 499.051, Florida
2502 Statutes, is amended to read:

2503 499.051 Inspections and investigations.—

2504 (7) The complaint and all information obtained pursuant to
2505 the investigation by the department are confidential and exempt
2506 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
2507 until the investigation and the enforcement action are
2508 completed. However, trade secret information contained therein
2509 as defined by s. 812.081(1)(c) shall remain confidential and
2510 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
2511 of the State Constitution, as long as the information is
2512 retained by the department. This subsection does not prohibit
2513 the department from using such information for regulatory or
2514 enforcement proceedings under this chapter or from providing
2515 such information to any law enforcement agency or any other
2516 regulatory agency. However, the receiving agency shall keep such
2517 records confidential and exempt as provided in this subsection.
2518 ~~In addition, this subsection is not intended to prevent~~
2519 ~~compliance with the provisions of s. 499.01212, and the pedigree~~
2520 ~~papers required in that section shall not be deemed a trade~~
2521 ~~secret.~~

2522 Section 13. Subsection (8) is added to section 499.066,
2523 Florida Statutes, to read:

2524 499.066 Penalties; remedies.—In addition to other penalties
2525 and other enforcement provisions:

2526 (8)(a) The department shall adopt rules to permit the

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2527 issuance of remedial, nondisciplinary citations. A citation
2528 shall be issued to the person alleged to have committed a
2529 violation and contain the person's name, address, and license
2530 number, if applicable, a brief factual statement, the sections
2531 of the law allegedly violated, and the monetary assessment and
2532 or other remedial measures imposed. The citation must clearly
2533 state that the person may choose, in lieu of accepting the
2534 citation, to have the department rescind the citation and
2535 conduct an investigation pursuant to s. 499.051. If the person
2536 does not dispute the matter in the citation with the department
2537 within 30 days after the citation is served, the citation
2538 becomes a final order and does not constitute discipline.

2539 (b) The department shall adopt rules designating violations
2540 for which a citation may be issued. The rules shall designate as
2541 citable those violations for which there is no substantial
2542 threat to the public health, safety, or welfare.

2543 (c) The department is entitled to recover the costs of
2544 investigation, in addition to any penalty provided according to
2545 department rule, as part of the penalty levied pursuant to the
2546 citation.

2547 (d) A citation must be issued within 12 months after the
2548 filing of the complaint that is the basis for the citation.

2549 (e) Service of a citation may be made by personal service
2550 or certified mail, restricted delivery, to the person at the
2551 person's last known address of record with the department or to
2552 the person's Florida registered agent.

2553 (f) The department has authority to, and shall adopt rules
2554 to, designate those violations for which a person is subject to
2555 the issuance of a citation and designate the monetary

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2556 assessments and or other remedial measures that must be taken
 2557 for those violations. The department has continuous authority to
 2558 amend its rules adopted pursuant to this section.

2559 Section 14. Subsection (14) of section 499.82, Florida
 2560 Statutes, is amended to read:

2561 499.82 Definitions.—As used in this part, the term:

2562 (14) "Wholesale distribution" means the distribution of
 2563 medical gas to a person other than a consumer or patient.

2564 Wholesale distribution of medical gases does not include:

2565 (a) The sale, purchase, or trade of a medical gas; an offer
 2566 to sell, purchase, or trade a medical gas; or the dispensing of
 2567 a medical gas pursuant to a prescription;

2568 (b) Activities exempt from the definition of wholesale
 2569 distribution in s. 499.003; or

2570 (c) The sale, purchase, or trade of a medical gas or an
 2571 offer to sell, purchase, or trade a medical gas for emergency
 2572 medical reasons; ~~or~~

2573 ~~(d) Other transactions excluded from the definition of~~
 2574 ~~wholesale distribution under the federal act or regulations~~
 2575 ~~implemented under the federal act related to medical gas.~~

2576 Section 15. Subsection (4) of section 499.89, Florida
 2577 Statutes, is amended to read:

2578 499.89 Recordkeeping.—

2579 ~~(4) A pedigree paper is not required for distributing or~~
 2580 ~~dispensing medical gas.~~

2581 Section 16. Section 499.01212, Florida Statutes, is
 2582 repealed.

2583 Section 17. Paragraph (a) of subsection (1) of section
 2584 409.9201, Florida Statutes, is amended to read:

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2585 409.9201 Medicaid fraud.—

2586 (1) As used in this section, the term:

2587 (a) "Prescription drug" means any drug, including, but not
 2588 limited to, finished dosage forms or active ingredients that are
 2589 subject to, defined in, or described in s. 503(b) of the Federal
 2590 Food, Drug, and Cosmetic Act or in s. 465.003(8), s. 499.003(47)
 2591 ~~499.003(52)~~, s. 499.007(13), or s. 499.82(10).

2592
 2593 The value of individual items of the legend drugs or goods or
 2594 services involved in distinct transactions committed during a
 2595 single scheme or course of conduct, whether involving a single
 2596 person or several persons, may be aggregated when determining
 2597 the punishment for the offense.

2598 Section 18. Paragraph (b) of subsection (1) of section
 2599 499.067, Florida Statutes, is amended to read:

2600 499.067 Denial, suspension, or revocation of permit,
 2601 certification, or registration.—

2602 (1)

2603 (b) The department may deny an application for a permit or
 2604 certification, or suspend or revoke a permit or certification,
 2605 if the department finds that:

2606 1. The applicant is not of good moral character or that it
 2607 would be a danger or not in the best interest of the public
 2608 health, safety, and welfare if the applicant were issued a
 2609 permit or certification.

2610 2. The applicant has not met the requirements for the
 2611 permit or certification.

2612 3. The applicant is not eligible for a permit or
 2613 certification for any of the reasons enumerated in s. 499.012.

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2614 4. The applicant, permittee, or person certified under s.
 2615 499.012(15) ~~s. 499.012(16)~~ demonstrates any of the conditions
 2616 enumerated in s. 499.012.

2617 5. The applicant, permittee, or person certified under s.
 2618 499.012(15) ~~s. 499.012(16)~~ has committed any violation of this
 2619 chapter.

2620 Section 19. Subsection (1) of section 794.075, Florida
 2621 Statutes, is amended to read:

2622 794.075 Sexual predators; erectile dysfunction drugs.—

2623 (1) A person may not possess a prescription drug, as
 2624 defined in s. 499.003(40) ~~499.003(43)~~, for the purpose of
 2625 treating erectile dysfunction if the person is designated as a
 2626 sexual predator under s. 775.21.

2627 Section 20. Paragraphs (d), (f), (i), and (j) of subsection
 2628 (3) of section 921.0022, Florida Statutes, are amended to read:

2629 921.0022 Criminal Punishment Code; offense severity ranking
 2630 chart.—

2631 (3) OFFENSE SEVERITY RANKING CHART

2632 (d) LEVEL 4

2633
 2634

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with

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2636 siren and lights activated.

499.0051(1) 3rd Failure to maintain or deliver transaction history,
transaction information, or
transaction statements ~~pedigree~~
~~papers.~~

2637 499.0051(2) 3rd ~~Failure to authenticate~~
~~pedigree papers.~~

2638 499.0051(5)
~~499.0051(6)~~ 2nd Knowing sale or delivery, or
 possession with intent to sell,
 contraband prescription drugs.

2639 517.07(1) 3rd Failure to register securities.

2640 517.12(1) 3rd Failure of dealer, associated
 person, or issuer of securities
 to register.

2641 784.07(2)(b) 3rd Battery of law enforcement
 officer, firefighter, etc.

2642 784.074(1)(c) 3rd Battery of sexually violent
 predators facility staff.

2643 784.075 3rd Battery on detention or
 commitment facility staff.

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2644

784.078 3rd Battery of facility employee by
throwing, tossing, or expelling
certain fluids or materials.

2645

784.08(2)(c) 3rd Battery on a person 65 years of
age or older.

2646

784.081(3) 3rd Battery on specified official
or employee.

2647

784.082(3) 3rd Battery by detained person on
visitor or other detainee.

2648

784.083(3) 3rd Battery on code inspector.

2649

784.085 3rd Battery of child by throwing,
tossing, projecting, or
expelling certain fluids or
materials.

2650

787.03(1) 3rd Interference with custody;
wrongly takes minor from
appointed guardian.

2651

787.04(2) 3rd Take, entice, or remove child
beyond state limits with
criminal intent pending custody
proceedings.

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2652

787.04(3) 3rd Carrying child beyond state
lines with criminal intent to
avoid producing child at
custody hearing or delivering
to designated person.

2653

787.07 3rd Human smuggling.

2654

790.115(1) 3rd Exhibiting firearm or weapon
within 1,000 feet of a school.

2655

790.115(2)(b) 3rd Possessing electric weapon or
device, destructive device, or
other weapon on school
property.

2656

790.115(2)(c) 3rd Possessing firearm on school
property.

2657

800.04(7)(c) 3rd Lewd or lascivious exhibition;
offender less than 18 years.

2658

810.02(4)(a) 3rd Burglary, or attempted
burglary, of an unoccupied
structure; unarmed; no assault
or battery.

2659

810.02(4)(b) 3rd Burglary, or attempted

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	588-02623-16		20161604c1	
			burglary, of an unoccupied conveyance; unarmed; no assault or battery.	
2660	810.06	3rd	Burglary; possession of tools.	
2661	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.	
2662	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.	
2663	812.014(2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.	
2664	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.	
2665	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.	
2666	817.568(2)(a)	3rd	Fraudulent use of personal identification information.	
2667				

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	588-02623-16		20161604c1	
	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.	
2668	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.	
2669	837.02(1)	3rd	Perjury in official proceedings.	
2670	837.021(1)	3rd	Make contradictory statements in official proceedings.	
2671	838.022	3rd	Official misconduct.	
2672	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.	
2673	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.	
2674	843.021	3rd	Possession of a concealed handcuff key by a person in custody.	
2675	843.025	3rd	Deprive law enforcement,	

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	588-02623-16		20161604c1	correctional, or correctional probation officer of means of protection or communication.
2676	843.15(1)(a)	3rd		Failure to appear while on bail for felony (bond estreatment or bond jumping).
2677	847.0135(5)(c)	3rd		Lewd or lascivious exhibition using computer; offender less than 18 years.
2678	874.05(1)(a)	3rd		Encouraging or recruiting another to join a criminal gang.
2679	893.13(2)(a)1.	2nd		Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
2680	914.14(2)	3rd		Witnesses accepting bribes.
2681	914.22(1)	3rd		Force, threaten, etc., witness, victim, or informant.
2682	914.23(2)	3rd		Retaliation against a witness, victim, or informant, no bodily injury.

	588-02623-16		20161604c1	
2683	918.12	3rd		Tampering with jurors.
2684	934.215	3rd		Use of two-way communications device to facilitate commission of a crime.
2685				
2686	(f) LEVEL 6			
2687				
2688				
	Florida Statute	Felony Degree		Description
2689	316.027(2)(b)	2nd		Leaving the scene of a crash involving serious bodily injury.
2690	316.193(2)(b)	3rd		Felony DUI, 4th or subsequent conviction.
2691	400.9935(4)(c)	2nd		Operating a clinic, or offering services requiring licensure, without a license.
2692	<u>499.0051(2)</u> 499.0051(3)	2nd		Knowing forgery of <u>transaction history, transaction information, or transaction statement pedigree papers.</u>
2693				

	588-02623-16		20161604c1
	<u>499.0051(3)</u>	2nd	Knowing purchase or receipt of
	499.0051(4)		prescription drug from
2694			unauthorized person.
	<u>499.0051(4)</u>	2nd	Knowing sale or transfer of
	499.0051(5)		prescription drug to
2695			unauthorized person.
	775.0875(1)	3rd	Taking firearm from law
2696			enforcement officer.
	784.021(1)(a)	3rd	Aggravated assault; deadly
2697			weapon without intent to kill.
	784.021(1)(b)	3rd	Aggravated assault; intent to
2698			commit felony.
	784.041	3rd	Felony battery; domestic
2699			battery by strangulation.
	784.048(3)	3rd	Aggravated stalking; credible
2700			threat.
	784.048(5)	3rd	Aggravated stalking of person
2701			under 16.
	784.07(2)(c)	2nd	Aggravated assault on law
2702			enforcement officer.

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	588-02623-16		20161604c1
	784.074(1)(b)	2nd	Aggravated assault on sexually
			violent predators facility
2703			staff.
	784.08(2)(b)	2nd	Aggravated assault on a person
2704			65 years of age or older.
	784.081(2)	2nd	Aggravated assault on specified
2705			official or employee.
	784.082(2)	2nd	Aggravated assault by detained
2706			person on visitor or other
			detainee.
	784.083(2)	2nd	Aggravated assault on code
2707			inspector.
	787.02(2)	3rd	False imprisonment; restraining
2708			with purpose other than those
			in s. 787.01.
	790.115(2)(d)	2nd	Discharging firearm or weapon
2709			on school property.
	790.161(2)	2nd	Make, possess, or throw
2710			destructive device with intent
			to do bodily harm or damage
			property.

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	588-02623-16		20161604c1
2711	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
2712	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
2713	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
2714	794.05(1)	2nd	Unlawful sexual activity with specified minor.
2715	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
2716	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
2717	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.

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	588-02623-16		20161604c1
2718	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
2719	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
2720	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
2721	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
2722	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
2723	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
2724	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.

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2725	588-02623-16		20161604c1
	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
2726	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
2727	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
2728	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
2729	827.03(2)(c)	3rd	Abuse of a child.
2730	827.03(2)(d)	3rd	Neglect of a child.
2731	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
2732	836.05	2nd	Threats; extortion.
2733	836.10	2nd	Written threats to kill or do bodily injury.
2734	843.12	3rd	Aids or assists person to

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	588-02623-16		20161604c1
			escape.
2735	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
2736	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
2737	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
2738	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
2739	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
2740	944.40	2nd	Escapes.
2741	944.46	3rd	Harboring, concealing, aiding

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588-02623-16			20161604c1	escaped prisoners.
2742	944.47(1)(a)5.	2nd		Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
2743	951.22(1)	3rd		Intoxicating drug, firearm, or weapon introduced into county facility.
2744				
2745	(i) LEVEL 9			
2746				
	Florida Statute	Felony Degree		Description
2747	316.193	1st		DUI manslaughter; failing to render aid or give information.
	(3)(c)3.b.			
2748	327.35	1st		BUI manslaughter; failing to render aid or give information.
	(3)(c)3.b.			
2749	409.920	1st		Medicaid provider fraud; \$50,000 or more.
	(2)(b)1.c.			
2750	<u>499.0051(8)</u> 499.0051(9)	1st		Knowing sale or purchase of contraband prescription drugs

588-02623-16			20161604c1	resulting in great bodily harm.
2751	560.123(8)(b)3.	1st		Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
2752	560.125(5)(c)	1st		Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
2753	655.50(10)(b)3.	1st		Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
2754	775.0844	1st		Aggravated white collar crime.
2755	782.04(1)	1st		Attempt, conspire, or solicit to commit premeditated murder.
2756				

	588-02623-16		20161604c1
	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
2757	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
2758	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
2759	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
2760	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
2761	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with

	588-02623-16		20161604c1
			performance of any governmental or political function.
2762	787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
2763	787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
2764	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
2765	787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
2766			

	588-02623-16		20161604c1
	790.161	1st	Attempted capital destructive device offense.
2767	790.166 (2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
2768	794.011 (2)	1st	Attempted sexual battery; victim less than 12 years of age.
2769	794.011 (2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
2770	794.011 (4) (a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
2771	794.011 (4) (b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age

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	588-02623-16		20161604c1
			or older.
2772	794.011 (4) (c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
2773	794.011 (4) (d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
2774	794.011 (8) (b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
2775	794.08 (2)	1st	Female genital mutilation; victim younger than 18 years of age.
2776	800.04 (5) (b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.

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2777	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
2778	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
2779	812.135(2)(b)	1st	Home-invasion robbery with weapon.
2780	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
2781	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
2782	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs

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	588-02623-16		20161604c1
			financial loss as a result of the false instrument.
2783	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
2784	827.03(2)(a)	1st	Aggravated child abuse.
2785	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
2786	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
2787	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill

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	588-02623-16		20161604c1	or injure another person.
2788	893.135	1st	Attempted capital trafficking offense.	
2789	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.	
2790	893.135(1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.	
2791	893.135(1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.	
2792	893.135(1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.	
2793	893.135(1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.	
2794	893.135(1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.	

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	588-02623-16		20161604c1	
2795	893.135(1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.	
2796	893.135(1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.	
2797	893.135(1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.	
2798	893.135(1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.	
2799	893.135(1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.	
2800	896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.	
2801	896.104(4)(a)3.	1st	Structuring transactions to evade reporting or	

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registration
requirements, financial
transactions totaling or
exceeding \$100,000.

2802

2803 (j) LEVEL 10

2804

Florida Felony
Statute Degree

Description

2805

499.0051(9) 1st Knowing sale or purchase
~~499.0051(10)~~ of contraband
prescription drugs
resulting in death.

2806

782.04(2) 1st,PBL Unlawful killing of
human; act is homicide,
unpremeditated.

2807

782.07(3) 1st Aggravated manslaughter
of a child.

2808

787.01(1)(a)3. 1st,PBL Kidnapping; inflict
bodily harm upon or
terrorize victim.

2809

787.01(3)(a) Life Kidnapping; child under
age 13, perpetrator also
commits aggravated child

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abuse, sexual battery,
or lewd or lascivious
battery, molestation,
conduct, or exhibition.

2810

787.06(3)(g) Life Human trafficking for
commercial sexual
activity of a child
under the age of 18 or
mentally defective or
incapacitated person.

2811

787.06(4)(a) Life Selling or buying of
minors into human
trafficking.

2812

794.011(3) Life Sexual battery; victim
12 years or older,
offender uses or
threatens to use deadly
weapon or physical force
to cause serious injury.

2813

812.135(2)(a) 1st,PBL Home-invasion robbery
with firearm or other
deadly weapon.

2814

876.32 1st Treason against the
state.

588-02623-16

20161604c1

2815
2816
2817

Section 21. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/11/16
Meeting Date

1604
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name David Mica Jr.

Job Title Director of Office of Legislative Affairs

Address 1946 N. Monroe St.

Phone 850-717-1848

Street

Tallahassee

FL

32399

City

State

Zip

Email David.Mica@myfloridalicense.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing DBPR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/16

Meeting Date

SB 1604

Bill Number (if applicable)

356636

Amendment Barcode (if applicable)

Topic Drugs, Devices & Cosmetics

Name Robert Beck

Job Title _____

Address 205 S. Adams

Street

Phone 850 766 1410

Tallahassee FL

City

State

32301

Zip

Email Robert@adamsadvocates

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Pharmacy Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 26, 2016

I respectfully request that **Senate Bill #1604**, relating to Drugs, Devices, and Cosmetics, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 21

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: PCS/SB 7050 (591178)

INTRODUCER: Appropriations Subcommittee on General Government and Governmental Oversight and Accountability Committee

SUBJECT: Information Technology Security

DATE: February 15, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Peacock</u>	<u>McVaney</u>		GO Submitted as Committee Bill
1.	<u>Wilson</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Fav/CS
2.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/SB 7050 revises duties of the Agency for State Technology (AST) and requires the AST to develop guidelines and policies for state agencies regarding information technology and cybersecurity.

Subject to an annual appropriation, state agencies are required to:

- Conduct risk assessments administered by a third party,
- Establish computer security incident response teams and procedures to respond to suspected technology security incidents, and
- Provide cyber security training to employees.

The AST's Technology Advisory Council is required to collaborate with the State Board of Education in adopting a unified state plan on Science, Technology, Education and Mathematics (STEM) education and the Florida Center for Cybersecurity on various goals related to cybersecurity.

The bill appropriates \$650,000 of nonrecurring funds and \$50,000 of recurring funds from the General Revenue Fund to the AST to conduct training exercises in coordination with the Florida National Guard, and \$12,000,000 from the General Revenue Fund to implement this act.

The bill is effective July 1, 2016.

II. Present Situation:

Agency for State Technology

The AST was created on July 1, 2014.¹ The executive director of the AST is appointed by the Governor and confirmed by the Senate. The duties and responsibilities include:²

- Developing and publishing information technology (IT) policy for management of the state's IT resources.
- Establishing and publishing IT architecture standards.
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects.
- Performing project oversight on all state IT projects with total costs of \$10 million or more.
- Identifying opportunities for standardization and consolidation of IT services that support common business functions and operations.
- Establishing best practices for procurement of IT products in collaboration with DMS.
- Participating with the DMS in evaluating, conducting and negotiating competitive solicitations for state term contracts for IT commodities, consultant services, or staff augmentation contractual services.
- Collaborating with the DMS in IT resource acquisition planning.
- Developing standards for IT reports and updates.
- Upon request, assisting state agencies in development of IT related legislative budget requests.
- Conducting annual assessments of state agencies to determine compliance with IT standards and guidelines developed by the AST.
- Providing operational management and oversight of the state data center.
- Recommending other IT services that should be designed, delivered, and managed as enterprise IT services.
- Recommending additional consolidations of agency data centers or computing facilities into the state data center.
- In consultation with state agencies, proposing a methodology for identifying and collecting current and planned IT expenditure data at the state agency level.
- Performing project oversight on any cabinet agency IT project that has a total project cost of \$25 million or more and impacts one or more other agencies.
- Consulting with departments regarding risks and other effects for IT projects implemented by an agency that must be connected to or accommodated by an IT system administered by a cabinet agency.
- Reporting annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding state IT standards or policies that conflict with federal regulations or requirements.

¹ Chapter 2014-221, Laws of Florida.

² Section 282.0051, F.S.

Technology Advisory Council

The Technology Advisory Council,³ consisting of seven members, is established within the AST: four members of the council are appointed by the Governor, two of which must be from the private sector. The President of the Senate and the Speaker of the House of Representatives each appoint one member of the council. The Attorney General, the Commissioner of Agriculture and Consumer Services, and the Chief Financial Officer jointly appoint one member by agreement of a majority of these officers.

The Technology Advisory Council considers and makes recommendations to the Executive Director on such matters as enterprise information technology policies, standards, services, and architecture.⁴ The council may also identify and recommend opportunities for the establishment of public-private partnerships when considering technology infrastructure and services in order to accelerate project delivery and provide a source of new or increased project funding.⁵ The Executive Director consults with the council with regard to executing the duties and responsibilities of the agency related to statewide information technology strategic planning and policy.⁶

Cybercrime Office, Florida Department of Law Enforcement

The Cybercrime Office within the Florida Department of Law Enforcement (FDLE) was established in 2011 with the functions and personnel of the Department of Legal Affairs Cybercrime Office transferred to FDLE.⁷ A cybercrime office has existed within FDLE since 1998.⁸

Some of the Cybercrime Office duties include:

- Monitoring state information technology resources and providing analysis on information technology security incidents, threats, and breaches;
- Investigating violations of state law pertaining to information technology security incidents and assisting in incident response and recovery;
- Providing security awareness training and information to state agency employees concerning cybersecurity, online sexual exploitation of children, and security risks, and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the AST; and
- Consulting with the AST in the adoption of rules relating to the information technology security provisions.⁹

³ Section 20.61(3), F.S.

⁴ Section 20.61(3)(a), F.S.

⁵ *Id.*

⁶ Section 20.61(3)(b), F.S.

⁷ Chapter 2011-132, Laws of Florida.

⁸ Analysis for HB 5401 by the House Appropriations Committee (July 6, 2011)(copy on file with the Governmental Oversight and Accountability Committee). .

⁹ Section 943.0415, F.S.

Unified State Plan for Science, Technology, Engineering, and Mathematics

Section 1001.03(17), F.S., requires the State Board of Education, in consultation with the Board of Governors and the Department of Economic Opportunity, to adopt a unified state plan to improve K-20 Science, Technology, Engineering, and Mathematics (STEM) education and prepare students for high-skill, high-wage, and high-demand employment in STEM and STEM-related fields.

Florida Center for Cybersecurity

The Florida Center for Cybersecurity was established in 2013 when the Legislature required the Board of Governors to submit a report to the Legislature and the Governor that provided a plan for the creation of a Florida Center for Cybersecurity to be located at the University of South Florida.¹⁰

The goals of the Florida Center for Cybersecurity are to:

- Position Florida as the national leader in cybersecurity and its related workforce through education, research, and community engagement;
- Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce;
- Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training;
- Seek out partnerships with major military installations to assist, when possible, in homeland cybersecurity defense initiatives; and
- Attract cybersecurity companies to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 20.61, F.S., to revise the membership of the Technology Advisory Council and requires that at least one of the four members appointed by the Governor be a cybersecurity expert. The bill also requires that the Technology Advisory Council, in coordination with the Florida Center for Cybersecurity, identify and recommend STEM training opportunities. These opportunities are for the establishment of cutting-edge educational and training programs for students consistent with the unified state STEM plan, in order to increase the cybersecurity workforce in the state, and to prepare cybersecurity professionals to possess a wide range of expertise.

Section 2 amends s. 282.318, F.S., to require the AST to establish standards and processes consistent with best practices for both information technology security and cybersecurity and to adopt rules that mitigate risks.

This section requires the AST to develop and publish guidelines and processes in its information technology security framework provided to state agencies for:

¹⁰ Chapter 2013-41, Laws of Florida. *Also, see* s. 1004.444, F.S.

¹¹ Section 1004.444(2), F.S.

- Completing risk assessments administered by a third party and submitting completed assessments to the AST.
- Establishing a computer security incident response team to respond to suspected information technology security incidents and the timeframe for convening a team to determine an appropriate response.
- Establishing an information technology security incident reporting process, to include a procedure for notification of the AST and Cybercrime Office of the Florida Department of Law Enforcement (FDLE). The notification procedure must provide for a tiered reporting framework with incidents of critical impact reported upon discovery, incidents of high impact reported within four hours of discovery, and incidents of low impact reported within five business days of discovery.
- Incorporating lessons learned through detection and response activities into agency response plans to continuously improve organizational response activities.
- Providing all state agency employees with information technology security and cybersecurity awareness education and training within 30 days after commencing employment.

In collaboration with the Cybercrime Office of the FDLE, the AST's training requirements are revised to require at least annual training on cybersecurity threats, trends, and best practices for state agency information security managers and computer security incident response team members.

This section also requires the AST, in collaboration with relevant partners and the Florida Center for Cybersecurity, to develop and establish a cutting-edge internship or work-study program in STEM to produce a more cybersecurity skilled state workforce.

The bill further requires that each state agency's information security manager establish a computer security incident response team to respond to suspected computer security incidents. The computer security incident response team members must convene as soon as practicable upon notice of a suspected security incident and determine an appropriate response. The response would include taking action to prevent the expansion or recurrence of an incident, mitigating the effects of an incident, and eradicating an incident. The newly identified risks must be mitigated or documented as an accepted risk by computer security incident response team members.

The bill specifies mobile devices and print environments as information technology resources that will be included in the comprehensive risk assessment.

The bill requires state agencies to:

- Conduct a risk assessment, subject to an annual legislative appropriation, by July 31, 2017, that is administered by a third party consistent with guidelines and processes prescribed by the AST. Additional risk assessments must be completed periodically.
- Develop and update written internal policies and procedures for reporting information technology security incidents and breaches to the Cybercrime Office of the FDLE and the AST to include notification procedures and reporting timeframes for information technology security incidents and breaches.
- Provide information technology security and cybersecurity awareness training to all state agency employees in the first 30 days after commencing employment for attainment of an

appropriate level of cyber literacy. State agencies must ensure that privileged users, third-party stakeholders, senior executives, and physical and information security personnel understand their roles and responsibilities.

- Provide training, in collaboration with the Cybercrime Office of the FDLE, at least annually, on cybersecurity threats, trends, and best practices to computer security incident response team members.
- Develop notification procedures for reporting information technology security incidents.
- Improve organizational response activities by incorporating lessons learned from current and previous detection and response activities into response plans.

Section 3 amends s. 1001.03, F.S., to include the Technology Advisory Council as one of the entities that consults with the State Board of Education in the adoption of a unified state plan to improve K-20 STEM education and prepare students for employment in STEM and STEM-related fields.

Section 4 amends s. 1004.444, F.S., to require the Florida Center for Cybersecurity to coordinate with the Technology Advisory Council in pursuit of certain goals.

Section 5 appropriates for Fiscal Year 2016-2017, the sums of \$650,000 in nonrecurring funds and \$50,000 in recurring funds from the General Revenue Fund to the AST to conduct training exercises in coordination with the Florida National Guard.

Section 6 appropriates for Fiscal Year 2016-2017, the sum of \$12,000,000 from the General Revenue Fund to the AST to implement this act.

Section 7 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Firms providing third party risk assessments to state agencies will see an increase in revenues.

C. Government Sector Impact:

The bill appropriates the following amounts for Fiscal Year 2016-2017:

- \$650,000 non-recurring from the General Revenue Fund to the AST to conduct training exercises with the Florida National Guard;
- \$50,000 recurring from the General Revenue Fund to the AST to conduct training exercises with the Florida National Guard; and
- \$12 million from the General Revenue Fund to the AST to implement the provisions of this bill (presumably the risk assessments conducted are for the state agencies).

VI. Technical Deficiencies:

Section 6 does not specify whether the \$12 million appropriation from the General Revenue Fund is from a recurring or nonrecurring appropriation.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 20.61, 282.318, 1001.03, and 1004.444 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on General Government on February 11, 2016:

The CS specifically includes mobile devices and print environments as information technology resources to be included in the comprehensive risk assessment.

B. Amendments:

None.



842542

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2016	.	
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	.	

Appropriations Subcommittee on General Government (Altman)
recommended the following:

Senate Amendment

Delete line 228
and insert:
information, and information technology resources, including
mobile devices and print environments, of the agency.

By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled
 2 An act relating to information technology security;
 3 amending s. 20.61, F.S.; revising the membership of
 4 the Technology Advisory Council to include a
 5 cybersecurity expert; requiring the council, in
 6 coordination with the Florida Center for
 7 Cybersecurity, to identify and recommend STEM training
 8 opportunities; amending s. 282.318, F.S.; revising
 9 duties of the Agency for State Technology; providing
 10 for administration of a third-party risk assessment;
 11 providing for the establishment of computer security
 12 incident response teams within state agencies;
 13 establishing procedures for reporting information
 14 technology security incidents; providing for
 15 continuously updated agency incident response plans;
 16 providing for information technology security and
 17 cybersecurity awareness training; providing for the
 18 establishment of a collaborative STEM program for
 19 cybersecurity workforce development; establishing
 20 computer security incident response team
 21 responsibilities; requiring each state agency head to
 22 conduct a third-party administered risk assessment;
 23 establishing notification procedures and reporting
 24 timelines for an information technology security
 25 incident or breach; amending s. 1001.03, F.S.;
 26 revising entities directed to adopt a unified state
 27 plan for K-20 STEM education to include the Technology
 28 Advisory Council; amending s. 1004.444, F.S.;
 29 requiring the Florida Center for Cybersecurity to
 30 coordinate with the Technology Advisory Council;
 31 providing appropriations; providing an effective date.
 32

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

34
 35 Section 1. Subsection (3) of section 20.61, Florida
 36 Statutes, is amended to read:

37 20.61 Agency for State Technology.—The Agency for State
 38 Technology is created within the Department of Management
 39 Services. The agency is a separate budget program and is not
 40 subject to control, supervision, or direction by the Department
 41 of Management Services, including, but not limited to,
 42 purchasing, transactions involving real or personal property,
 43 personnel, or budgetary matters.

44 (3) The Technology Advisory Council, consisting of seven
 45 members, is established within the Agency for State Technology
 46 and shall be maintained pursuant to s. 20.052. Four members ~~of~~
 47 ~~the council~~ shall be appointed by the Governor, two of whom must
 48 be from the private sector and one of whom must be a
 49 cybersecurity expert. The President of the Senate and the
 50 Speaker of the House of Representatives shall each appoint one
 51 member ~~of the council~~. The Attorney General, the Commissioner of
 52 Agriculture ~~and Consumer Services~~, and the Chief Financial
 53 Officer shall jointly appoint one member by agreement of a
 54 majority of these officers. Upon initial establishment of the
 55 council, two of the Governor's appointments shall be for 2-year
 56 terms. Thereafter, all appointments shall be for 4-year terms.

57 (a) The council shall consider and make recommendations to
 58 the executive director on such matters as enterprise information
 59 technology policies, standards, services, and architecture. The
 60 council may also identify and recommend opportunities for the
 61 establishment of public-private partnerships when considering

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62 technology infrastructure and services in order to accelerate
63 project delivery and provide a source of new or increased
64 project funding.

65 (b) The executive director shall consult with the council
66 with regard to executing the duties and responsibilities of the
67 agency related to statewide information technology strategic
68 planning and policy.

69 (c) The council shall coordinate with the Florida Center
70 for Cybersecurity to identify and recommend opportunities for
71 establishing cutting-edge educational and training programs in
72 science, technology, engineering, and mathematics (STEM) for
73 students, consistent with the unified state plan adopted
74 pursuant to s. 1001.03(17); increasing the cybersecurity
75 workforce in the state; and preparing cybersecurity
76 professionals to possess a wide range of expertise.

77 (d) (e) The council shall be governed by the Code of Ethics
78 for Public Officers and Employees as set forth in part III of
79 chapter 112, and each member must file a statement of financial
80 interests pursuant to s. 112.3145.

81 Section 2. Section 282.318, Florida Statutes, is amended to
82 read:

83 282.318 Security of data and information technology.—

84 (1) This section may be cited as the "Information
85 Technology Security Act."

86 (2) As used in this section, the term "state agency" has
87 the same meaning as provided in s. 282.0041, except that the
88 term includes the Department of Legal Affairs, the Department of
89 Agriculture and Consumer Services, and the Department of
90 Financial Services.

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91 (3) The Agency for State Technology is responsible for
92 establishing standards and processes consistent with generally
93 accepted best practices for information technology security and
94 cybersecurity and adopting rules that safeguard an agency's
95 data, information, and information technology resources to
96 ensure availability, confidentiality, and integrity and to
97 mitigate risks. The agency shall also:

98 (a) Develop, and annually update by February 1, a statewide
99 information technology security strategic plan that includes
100 security goals and objectives for the strategic issues of
101 information technology security policy, risk management,
102 training, incident management, and disaster recovery planning.

103 (b) Develop and publish for use by state agencies an
104 information technology security framework that, at a minimum,
105 includes guidelines and processes for:

106 1. Establishing asset management procedures to ensure that
107 an agency's information technology resources are identified and
108 managed consistent with their relative importance to the
109 agency's business objectives.

110 2. Using a standard risk assessment methodology that
111 includes the identification of an agency's priorities,
112 constraints, risk tolerances, and assumptions necessary to
113 support operational risk decisions.

114 3. Completing comprehensive risk assessments and
115 information technology security audits and submitting completed
116 assessments and audits to the Agency for State Technology.

117 4. Completing risk assessments administered by a third
118 party and submitting completed assessments to the Agency for
119 State Technology.

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120 5.4- Identifying protection procedures to manage the
 121 protection of an agency's information, data, and information
 122 technology resources.

123 6.5- Establishing procedures for accessing information and
 124 data to ensure the confidentiality, integrity, and availability
 125 of such information and data.

126 7.6- Detecting threats through proactive monitoring of
 127 events, continuous security monitoring, and defined detection
 128 processes.

129 8.7- Establishing a computer security incident response
 130 team to respond to suspected ~~Responding to~~ information
 131 technology security incidents, including breaches of personal
 132 information containing confidential or exempt data. An agency's
 133 computer security incident response team must convene as soon as
 134 practicable upon notice of a suspected security incident and
 135 shall determine the appropriate response.

136 9.8- Recovering information and data in response to an
 137 information technology security incident. The recovery may
 138 include recommended improvements to the agency processes,
 139 policies, or guidelines.

140 10. Establishing an information technology security
 141 incident reporting process, which must include a procedure for
 142 notification of the Agency for State Technology and the
 143 Cybercrime Office of the Department of Law Enforcement. The
 144 notification procedure must provide for tiered reporting
 145 timeframes, with incidents of critical impact reported
 146 immediately upon discovery, incidents of high impact reported
 147 within 4 hours of discovery, and incidents of low impact
 148 reported within 5 business days of discovery.

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149 11. Incorporating lessons learned through detection and
 150 response activities into agency incident response plans to
 151 continuously improve organizational response activities.

152 12.9- Developing agency strategic and operational
 153 information technology security plans required pursuant to this
 154 section.

155 13.40- Establishing the managerial, operational, and
 156 technical safeguards for protecting state government data and
 157 information technology resources that align with the state
 158 agency risk management strategy and that protect the
 159 confidentiality, integrity, and availability of information and
 160 data.

161 14. Providing all agency employees with information
 162 technology security and cybersecurity awareness education and
 163 training within 30 days after commencing employment.

164 (c) Assist state agencies in complying with this section.

165 (d) In collaboration with the Cybercrime Office of the
 166 Department of Law Enforcement, provide training that must
 167 include training on cybersecurity threats, trends, and best
 168 practices for state agency information security managers and
 169 computer security incident response team members at least
 170 annually.

171 (e) Annually review the strategic and operational
 172 information technology security plans of executive branch
 173 agencies.

174 (f) Develop and establish a cutting-edge internship or
 175 work-study program in science, technology, engineering, and
 176 mathematics (STEM), which will produce a more skilled
 177 cybersecurity workforce in the state. The program must be a

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178 collaborative effort involving negotiations between the Agency
 179 for State Technology, relevant Agency for State Technology
 180 partners, and the Florida Center for Cybersecurity.

181 (4) Each state agency head shall, at a minimum:

182 (a) Designate an information security manager to administer
 183 the information technology security program of the state agency.
 184 This designation must be provided annually in writing to the
 185 Agency for State Technology by January 1. A state agency's
 186 information security manager, for purposes of these information
 187 security duties, shall report directly to the agency head.

188 1. The information security manager shall establish a
 189 computer security incident response team to respond to a
 190 suspected computer security incident.

191 2. Computer security incident response team members shall
 192 convene as soon as practicable upon notice of a suspected
 193 security incident.

194 3. Computer security incident response team members shall
 195 determine the appropriate response for a suspected computer
 196 security incident. An appropriate response includes taking
 197 action to prevent expansion or recurrence of an incident,
 198 mitigating the effects of an incident, and eradicating an
 199 incident. Newly identified risks must be mitigated or documented
 200 as an accepted risk by computer security incident response team
 201 members.

202 (b) Submit to the Agency for State Technology annually by
 203 July 31, the state agency's strategic and operational
 204 information technology security plans developed pursuant to
 205 rules and guidelines established by the Agency for State
 206 Technology.

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207 1. The state agency strategic information technology
 208 security plan must cover a 3-year period and, at a minimum,
 209 define security goals, intermediate objectives, and projected
 210 agency costs for the strategic issues of agency information
 211 security policy, risk management, security training, security
 212 incident response, and disaster recovery. The plan must be based
 213 on the statewide information technology security strategic plan
 214 created by the Agency for State Technology and include
 215 performance metrics that can be objectively measured to reflect
 216 the status of the state agency's progress in meeting security
 217 goals and objectives identified in the agency's strategic
 218 information security plan.

219 2. The state agency operational information technology
 220 security plan must include a progress report that objectively
 221 measures progress made towards the prior operational information
 222 technology security plan and a project plan that includes
 223 activities, timelines, and deliverables for security objectives
 224 that the state agency will implement during the current fiscal
 225 year.

226 (c) Conduct, and update every 3 years, a comprehensive risk
 227 assessment to determine the security threats to the data,
 228 information, and information technology resources of the agency.
 229 The risk assessment must comply with the risk assessment
 230 methodology developed by the Agency for State Technology and is
 231 confidential and exempt from s. 119.07(1), except that such
 232 information shall be available to the Auditor General, the
 233 Agency for State Technology, the Cybercrime Office of the
 234 Department of Law Enforcement, and, for state agencies under the
 235 jurisdiction of the Governor, the Chief Inspector General.

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236 (d) Subject to annual legislative appropriation, conduct a
 237 risk assessment that must be administered by a third party
 238 consistent with the guidelines and processes prescribed by the
 239 Agency for State Technology. An initial risk assessment must be
 240 completed by July 31, 2017. Additional risk assessments shall be
 241 completed periodically consistent with the guidelines and
 242 processes prescribed by the Agency for State Technology.

243 (e)(d) Develop, and periodically update, written internal
 244 policies and procedures, which include procedures for reporting
 245 information technology security incidents and breaches to the
 246 Cybercrime Office of the Department of Law Enforcement and the
 247 Agency for State Technology. Procedures for reporting
 248 information technology security incidents and breaches must
 249 include notification procedures and reporting timeframes. Such
 250 policies and procedures must be consistent with the rules,
 251 guidelines, and processes established by the Agency for State
 252 Technology to ensure the security of the data, information, and
 253 information technology resources of the agency. The internal
 254 policies and procedures that, if disclosed, could facilitate the
 255 unauthorized modification, disclosure, or destruction of data or
 256 information technology resources are confidential information
 257 and exempt from s. 119.07(1), except that such information shall
 258 be available to the Auditor General, the Cybercrime Office of
 259 the Department of Law Enforcement, the Agency for State
 260 Technology, and, for state agencies under the jurisdiction of
 261 the Governor, the Chief Inspector General.

262 (f)(e) Implement managerial, operational, and technical
 263 safeguards established by the Agency for State Technology to
 264 address identified risks to the data, information, and

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265 information technology resources of the agency.

266 (g)(f) Ensure that periodic internal audits and evaluations
 267 of the agency's information technology security program for the
 268 data, information, and information technology resources of the
 269 agency are conducted. The results of such audits and evaluations
 270 are confidential information and exempt from s. 119.07(1),
 271 except that such information shall be available to the Auditor
 272 General, the Cybercrime Office of the Department of Law
 273 Enforcement, the Agency for State Technology, and, for agencies
 274 under the jurisdiction of the Governor, the Chief Inspector
 275 General.

276 (h)(g) Include appropriate information technology security
 277 requirements in the written specifications for the solicitation
 278 of information technology and information technology resources
 279 and services, which are consistent with the rules and guidelines
 280 established by the Agency for State Technology in collaboration
 281 with the Department of Management Services.

282 (i)(h) Provide information technology security and
 283 cybersecurity awareness training to all state agency employees
 284 in the first 30 days after commencing employment concerning
 285 information technology security risks and the responsibility of
 286 employees to comply with policies, standards, guidelines, and
 287 operating procedures adopted by the state agency to attain an
 288 appropriate level of cyber literacy and reduce those risks. The
 289 training may be provided in collaboration with the Cybercrime
 290 Office of the Department of Law Enforcement. Agencies shall
 291 ensure that privileged users, third-party stakeholders, senior
 292 executives, and physical and information security personnel
 293 understand their roles and responsibilities.

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294 (j) In collaboration with the Cybercrime Office of the
 295 Department of Law Enforcement, provide training on cybersecurity
 296 threats, trends, and best practices to computer security
 297 incident response team members at least annually.

298 ~~(k)(i)~~ Develop a process for detecting, reporting, and
 299 responding to threats, breaches, or information technology
 300 security incidents that are consistent with the security rules,
 301 guidelines, and processes established by the Agency for State
 302 Technology.

303 1. All information technology security incidents and
 304 breaches must be reported to the Agency for State Technology.
 305 Procedures for reporting information technology security
 306 incidents and breaches must include notification procedures.

307 2. For information technology security breaches, state
 308 agencies shall provide notice in accordance with s. 501.171.

309 (l) Improve organizational response activities by
 310 incorporating lessons learned from current and previous
 311 detection and response activities into response plans.

312 (5) The Agency for State Technology shall adopt rules
 313 relating to information technology security and to administer
 314 this section.

315 Section 3. Subsection (17) of section 1001.03, Florida
 316 Statutes, is amended to read:

317 1001.03 Specific powers of State Board of Education.—

318 (17) UNIFIED STATE PLAN FOR SCIENCE, TECHNOLOGY,
 319 ENGINEERING, AND MATHEMATICS (STEM).—The State Board of
 320 Education, in consultation with the Board of Governors, the
 321 Technology Advisory Council, and the Department of Economic
 322 Opportunity, shall adopt a unified state plan to improve K-20

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323 STEM education and prepare students for high-skill, high-wage,
 324 and high-demand employment in STEM and STEM-related fields.
 325 Section 4. Section 1004.444, Florida Statutes, is amended
 326 to read:

327 1004.444 Florida Center for Cybersecurity.—

328 (1) The Florida Center for Cybersecurity is established
 329 within the University of South Florida.

330 (2) The goals of the center are to:

331 (a) Position Florida as the national leader in
 332 cybersecurity and its related workforce through education,
 333 research, and community engagement. The center shall coordinate
 334 with the Technology Advisory Council in pursuit of this goal.

335 (b) Assist in the creation of jobs in the state's
 336 cybersecurity industry and enhance the existing cybersecurity
 337 workforce. The center shall coordinate with the Technology
 338 Advisory Council in pursuit of this goal.

339 (c) Act as a cooperative facilitator for state business and
 340 higher education communities to share cybersecurity knowledge,
 341 resources, and training. The center shall coordinate with the
 342 Technology Advisory Council in pursuit of this goal.

343 (d) Seek out partnerships with major military installations
 344 to assist, when possible, in homeland cybersecurity defense
 345 initiatives.

346 (e) Attract cybersecurity companies to the state with an
 347 emphasis on defense, finance, health care, transportation, and
 348 utility sectors.

349 Section 5. For the 2016-2017 fiscal year, the sums of
 350 \$650,000 in nonrecurring funds and \$50,000 in recurring funds
 351 are appropriated from the General Revenue Fund to the Agency for

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352 State Technology to conduct training exercises in coordination
353 with the Florida National Guard.

354 Section 6. For the 2016-2017 fiscal year, the sum of \$12
355 million is appropriated from the General Revenue Fund to the
356 Agency for State Technology for the purpose of implementing this
357 act.

358 Section 7. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-16

Meeting Date

7050

Bill Number (if applicable)

Topic Information Technology Security

Amendment Barcode (if applicable)

Name JAMES TAYLOR

Job Title EXECUTIVE DIRECTOR

Address _____

Phone 407 218-2780

Street

TALIN

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA TECHNOLOGY COUNCIL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/15

Meeting Date

7050

Bill Number (if applicable)

Topic Information Technology

Amendment Barcode (if applicable)

Name Chuck Cliburn

Job Title President, New Capital IT

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Email chuck@newcapitalinc.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing A I F

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Children, Families, and Elder Affairs
Commerce and Tourism

SENATOR JEREMY RING
29th District

January 22, 2016

Senator Alan Hays, Chair
Committee on General Government Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays,

I am writing to respectfully request your cooperation in placing Senate Bill 7050, relating to Information Technology Security, on the Committee on General Government Appropriations agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Jamie DeLoach, Staff Director
Lisa Waddell, Committee Administrative Assistant

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flisenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110
Case No.:
Caption: Senate Appropriations Subcommittee on General Government

Type:
Judge:

Started: 2/11/2016 10:07:25 AM
Ends: 2/11/2016 11:15:32 AM
Length: 01:08:08

10:07:25 AM Sen. Hays (Chair)
10:08:46 AM S 1226
10:08:54 AM Sen. Ring
10:10:10 AM S 7050
10:10:16 AM Sen. Ring
10:11:39 AM Am. 842542
10:11:46 AM Sen. Ring
10:12:09 AM S 7050 (cont.)
10:12:15 AM Chuck Cliburn, President, New Capitol IT, Associated Industries of Florida (waives in support)
10:12:19 AM James Taylor, Executive Director, Florida Technology Council (waives in support)
10:13:02 AM S 864
10:13:05 AM Sen. Smith
10:14:29 AM Roger Simmermaker, Author/Speaker/Publisher, Consumer Patriotism Corporation
10:16:21 AM James Taylor, Executive Director, Florida Technology Council (waives in support)
10:16:38 AM Gail Marie Perry, Chair, Communications Workers of America Council of Florida (waives in support)
10:16:51 AM David E. Singer, citizen/voter (waives in support)
10:17:02 AM Frank Angel, citizen (waives in support)
10:17:40 AM CS/SB 912
10:17:46 AM Sen. Flores
10:19:39 AM Sen. Dean
10:20:11 AM Sen. Flores
10:21:14 AM Sen. Dean
10:21:24 AM Sen. Flores
10:21:31 AM Sen. Hays
10:21:46 AM Sen. Flores
10:22:00 AM Antonio Davis, Veteran
10:25:17 AM Sen. Hays
10:25:28 AM Melissa Ramba, Vice President, Government Affairs, Florida Retail Federation (waives in support)
10:25:44 AM Don Heaton, Lieutenant, Volusia County Sheriff's Office/Florida Sheriff's Association (waives in support)
10:25:46 AM Jared Ross, Senior Vice President, Governmental Affairs, Florida Credit Union Association (waives in support)
10:26:02 AM Jonathan Rees, Deputy Director, Legislative Affairs, Florida Department of Agriculture and Consumer Services (waives in support)
10:26:09 AM Bernadette Howard, Government Affairs Committee, The Florida Police Chiefs Association (waives in support)
10:26:10 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
10:26:50 AM S 1428
10:27:00 AM Valerie Clark, Senator Simmon's Aide
10:27:54 AM John Kuczanski, State Board of Administration, State Board of Administration (waives in support)
10:28:40 AM CS/SB 1538
10:28:43 AM Sen. Evers
10:29:42 AM Jessica Kraynak, Legislative Analyst, The Florida Department of Veteran's Affairs (waives in support)
10:29:56 AM A. Davis
10:33:36 AM S 1176
10:33:45 AM Representative Katie Edwards
10:35:22 AM S 966
10:35:40 AM Sen. Benacquisto
10:37:19 AM Elizabeth Boyd, Legislative Affairs Director, Chief Financial Officer Atwater
10:37:49 AM Caitlin Murray, Director of Government Affairs, Office of Insurance Regulation (waives in support)
10:38:23 AM Kyle Ulrich, Senior Vice President, Florida Association of Insurance Agents (waives in support)
10:39:14 AM S 1200
10:39:16 AM Sen. Bean

10:40:53 AM Al Lawson, Lobbyist, Educational Foundation (waives in support)
10:40:53 AM Alexandra Dominguez, Foundation for Florida's Future (waives in support)
10:40:59 AM Summer Pfeiffer, Vice President, Government Relations, Children's Home Society of Florida (waives of support)
10:41:16 AM Carol Bracy, Consultant, Nurse-Family Partnership (waives in support)
10:41:25 AM Heather Turnbull, Partner, Community Based Care of Central Florida, Inc. (waives in support)
10:42:00 AM S 1206
10:42:02 AM Sen. Abruzzo
10:43:11 AM CS/SB 326
10:43:18 AM Chris Spencer, Senator Brandes' Assistant
10:43:45 AM Am. 625186
10:44:10 AM C. Spencer
10:44:11 AM CS/SB 326 (cont.)
10:44:19 AM Bob Nave, Vice President, Research, Florida Tax Watch
10:45:26 AM A. Davis (waives in support)
10:46:01 AM CS/SB 992
10:46:15 AM C. Spencer
10:47:31 AM Am. 939726
10:47:43 AM C. Spencer
10:48:00 AM Am. 893118
10:48:05 AM C. Spencer
10:48:43 AM Am. 246428
10:48:47 AM C. Spencer
10:48:56 AM Am. 689322
10:49:03 AM C. Spencer
10:49:37 AM CS/SB 992 (cont.)
10:50:19 AM S 1228
10:50:38 AM Charlie Anderson, Senator Detert's Assistant
10:52:06 AM S 1270
10:52:16 AM Sen. Simpson
10:52:49 AM Jim Spratt, Florida Fertilizer & Agrichemical Association (waives in support)
10:52:59 AM Butch Calhoun, Florida Fruit & Vegetable Association (waives in support)
10:53:08 AM Alex Lucas, Florida Fertilizer & Agrichemical Association (waives in support)
10:53:19 AM Lisa Henning, Consultant, Florida Pest Management Association (waives in support)
10:53:25 AM Chris Hanson, Ballard Partners, Bayer Corporation (waives in support)
10:54:05 AM CS/SB 1422
10:54:20 AM Diane Suddes, Senator Simmons' Assistant
10:54:27 AM Am. 243832
10:54:56 AM D. Suddes
10:54:58 AM Am. 166092
10:55:08 AM D. Suddes
10:55:41 AM CS/SB 1422 (cont.)
10:55:43 AM Caitlin Murray, Director, Government Affairs, Office of Insurance Regulation (waives in support)
10:56:22 AM S 1282
10:56:29 AM Sen. Dean
10:57:35 AM Am. 436274
10:57:52 AM Sen. Dean
10:58:05 AM Jackie Fauls, Legislative Affairs Director, Fish & Wildlife Conservation Commission (waives in support)
10:58:20 AM Am. 833622
10:58:27 AM Sen. Dean
10:58:43 AM J. Fauls (waives in support)
10:59:06 AM S 1282(cont.)
10:59:19 AM J. Fauls (waives in support)
10:59:37 AM S 1300
10:59:41 AM Sen. Dean
11:00:44 AM Stephen James, Florida Association of Counties (waives in support)
11:00:53 AM Lisa Henning, Consultant, Marine Industries Association of Florida (waives in support)
11:00:55 AM Rebecca O'Hara, Florida League of Cities (waives in support)
11:01:02 AM Diana Padgett, Consultant, Marine Industries of Palm Beach County (waives in support)
11:01:36 AM S 1604
11:01:49 AM Anne Bell, Senator Grimsley's Assistant
11:03:10 AM Am 457132

11:03:16 AM A. Bell
11:03:17 AM Am. 356636
11:03:30 AM A. Bell
11:03:49 AM Robert Beck, Florida Pharmacy Association (waives in support)
11:04:12 AM S 1604 (cont.)
11:04:19 AM David Mica Jr., Director, Office of Legislative Affairs, Department of Business and Professional Regulation
(waives in support)
11:04:57 AM S 922
11:05:21 AM Marcia Mathis, Senator Montford's Assistant
11:05:54 AM Am. 891642
11:06:02 AM M. Mathis
11:07:02 AM Am. 405980
11:07:12 AM Sen. Dean
11:07:32 AM Am. 891642 (cont.)
11:07:54 AM S 922 (cont.)
11:08:02 AM Keyna Cory, Lobbyist, National Waste & Recycling Association Florida Chapter (waives in support)
11:08:29 AM Andrew Ketchel, Director, Legislative Affairs, Department of Environmental Protection (waives in support)
11:08:30 AM A. Davis
11:09:50 AM S 1488
11:09:55 AM M. Mathis
11:10:23 AM Loren Levy, General Counsel, Property Appraisers' Association of Florida (waives in support)
11:11:03 AM CS/SB 1052
11:11:10 AM Sen. Hays
11:11:21 AM Am. 726962
11:11:27 AM Sen. Hays
11:12:51 AM Am. 900188
11:12:56 AM Sen. Hays
11:13:07 AM Sen. Altman
11:13:18 AM Diana Ferguson, Attorney, American Society of Landscape Architects Florida Chapter (waives in support)
11:13:31 AM Kurt Spitzer, Executive Director, Florida Stormwater Association (waives in support)
11:13:43 AM Am. 726962 (cont.)
11:14:03 AM CS/SB 1052 (cont.)
11:14:15 AM Jim Spratt, Florida Nursery Growers & Landscape Association (waives in support)
11:14:16 AM Lee Killinger, Director Public Relations & Government Affairs (waives in support)
11:14:17 AM K. Cory (waives in support)
11:14:57 AM Sen. Altman
11:15:05 AM Sen. Simpson
11:15:25 AM
11:15:30 AM
11:15:30 AM



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Vice Chair*
Appropriations
Appropriations Subcommittee on General Government
Banking and Insurance
Finance and Tax
Fiscal Policy

SENATOR GWEN MARGOLIS

35th District

February 11, 2016

Senator Alan Hays, Chairman
Senate Appropriations Subcommittee on General Government
Suite 320 Senate Office Building
Tallahassee, Florida 32399-1100

Dear Chairman Hays:

Please excuse my absence from the Appropriations Subcommittee on General Government Committee meeting being held on Thursday, February 11, 2016. I have been a little under the weather lately and was unable to attend.

Your favorable consideration of my request to be excused is very much appreciated.

Sincerely,

Gwen Margolis

State Senator Gwen Margolis
District 35

cc: Ms. Jamie DeLoach

REPLY TO:

- 3050 Biscayne Boulevard, Suite 600, Miami, Florida 33137 (305) 571-5777
- 414 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore