

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1307 Department of Agriculture and Consumer Services

SPONSOR(S): Criminal Justice Subcommittee, McClure

TIED BILLS: IDEN./SIM. BILLS: SB 1150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N	Thompson	Anstead
2) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Padgett	Hall
3) Commerce Committee	16 Y, 0 N	Thompson	Hamon

SUMMARY ANALYSIS

The Division of Licensing (DOL) within the Department of Agriculture and Consumer Services (DACS) administers Florida's concealed weapon licensing program and oversees Florida's private investigative, private security, and recovery services industries. The Division of Consumer Services (DCS) within DACS regulates various businesses, such as charitable organizations and telemarketers, and protects consumers and businesses from unfair and unsafe business practices across a wide range of industries, including gasoline, liquefied petroleum (LP) gas, and weighing and measuring devices.

The bill streamlines licensure requirements and reduces fees related to the private investigative, private security, and recovery services industries; relaxes certain registration fee requirements for charitable organizations; revises services that certain LP gas licensees are authorized to conduct; and provides criminal penalties for retail fuel theft violations. In part, the bill:

- Allows former military firearms instructors to use their experience in the military to satisfy a firearm training requirement when applying for a Class "K" Firearms Instructor License.
- Allows Class "K" Firearms Instructor teaching experience to replace the license renewal training.
- Allows DACS to waive the annual firearms training for Class "G" Statewide Firearm Licensees who provide proof of annual training under the federal Law Enforcement Officers' Safety Act.
- Gives DACS more flexibility when charging late fees for renewal applications.
- Allows DACS to publish the private investigative, private security, and recovery industry newsletters and pamphlets online.
- Authorizes electronic verification, instead of verification under oath, for certain recovery agent and security guard applications for licensure.
- Relaxes annual registration fees for charitable organizations that are not in higher revenue categories.
- Expands the types of services that licensed Category I LP Gas Dealers and Category V LP Gas Dealers may provide to include the "design" of LP gas equipment.
- Creates provisions that address retail fuel theft and tampering with gas pumps, including prohibitions, seizure and forfeiture requirements, and criminal penalties.

The bill may have an insignificant fiscal impact on state government from reduced expenditures and potential increases in revenues. The bill is not expected to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Division of Licensing

The Division of Licensing (DOL) within the Department of Agriculture and Consumer Services (DACS) administers Florida's concealed weapon licensing program¹ and oversees Florida's private investigative, private security, and recovery services industries.² The DOL's regulatory oversight of those services includes licensing, enforcing compliance standards, and ensuring public protection from unethical business practices and unlicensed activity.³

Private Investigative and Security Services

Currently, the DOL offers 22 different types of private investigative, private security, and recovery services licenses and four different types of concealed weapon or firearm licenses. As of February 28, 2023, the DOL had issued a total of 169,758 private investigative, private security, and recovery services licenses and 2,459,530 concealed weapon permits, to qualified applicants. The following chart provides a breakdown of the total number of each license type.⁴

License Type	License Title	Total
C	Private Investigators	7,240
CC	Private Investigator Interns	1,496
A	Private Investigative Agencies	2,721
AA	Private Investigative Agency Branch Offices	22
MA	Private Investigative Agency Managers	86
M	Private Investigative/Security Agency Managers	475
D	Security Officers	144,151
B	Security Agencies	2,064
BB	Security Agency Branch Offices	184
MB	Security Managers	1,551
AB	Security Agency/Private Investigative Agency Branch Offices	19
DS	Security Officer Schools	427
DI	Security Officer Instructors	1,874
G	Statewide Firearm Licenses	27,363
K	Firearms Instructors	676
E	Recovery Agents	786
EE	Recovery Agent Interns	327
R	Recovery Agencies	296
RR	Recovery Agency Branch Offices	31
MR	Recovery Agency Managers	3
RS	Recovery Agent Schools	6
RI	Recovery Agent Instructors	8
Subtotal of Private Investigative, Private Security, and Recovery Services Licenses		191,806
W	Concealed Weapon or Firearm	2,645,444
WJ	Concealed Weapon or Firearm/Circuit and	827

¹ S. 790.06, F.S.

² Ch. 493, F.S.

³ Office of Program Policy Analysis and Government Accountability, Government Program Summaries, *Department of Agriculture and Consumer Services Licensing*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4101> (last visited Mar. 16, 2023).

⁴ The Florida Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports*, <https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports> (last visited Mar. 16, 2023).

	County Judges	
WR	Concealed Weapon or Firearm/Retired Law Enforcement and Correctional Officers	13,680
WS	Concealed Weapon or Firearm/Consular Security Official	10
Subtotal of Concealed Weapon Licenses		2,659,961
Total Number of Licenses		2,851,767

Class “G” Statewide Firearm License

A Class “G” Statewide Firearm License is a supplemental license that permits specific licensees to carry a firearm during the course of their licensed, employment-related activity. A Class “G” Statewide Firearm License is available only to individuals who currently hold one of the following licenses:⁵

- Private investigator (Class “C”);
- Private investigator intern (Class “CC”);
- Security officer (Class “D”);
- Private investigative or security agency manager (Class “M”);
- Private investigative agency manager (Class “MA”); or
- Security agency manager (Class “MB”).

Class “G” Statewide Firearm License Application and Training Requirements

An initial applicant for a Class “G” Statewide Firearm License must complete firearm training, which must include at least 28 hours of range and classroom training either by in-person instruction, or via live instruction through a secure website, with no more than eight hours consisting of in-person range training, which must include safe handling and storage of firearms. The training must be administered and taught by a Class “K” Firearms Instructor Licensee who verifies the identity and attendance of the applicant.⁶

The Class “G” Statewide Firearm License applicant must submit a training certificate to DACS upon completion of the training. Additionally, the Class “K” Firearms Instructor Licensee who provides the training must submit results directly to the DOL and provide a copy of the training results to the trainee.⁷ An applicant who was discharged from service as a military officer within the last 12 months, and who has completed specific military courses is deemed to have completed a substantially similar training, and is exempt from the 28 hours of range and classroom training required for an initial Class “G” Statewide Firearm License.⁸

The “Class G” Statewide Firearm License must be renewed every two years.⁹ Class “G” Statewide Firearm Licensees must annually complete four hours of firearms requalification training for each caliber of firearm that he or she carries in the course of his or her duties.¹⁰ DACS is authorized to waive the firearms training requirement if:¹¹

- The applicant provides proof showing he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous two years of the licensure period;
- The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous two years of the licensure period; or

⁵ S. 493.6115(2), F.S.

⁶ S. 493.6105(5), F.S. *See also* R. 5N-1.132(1)(a), F.A.C.

⁷ *Id.*

⁸ R. 5N-1.119, F.A.C.

⁹ S. 493.6113(1), F.S.

¹⁰ S. 493.6113(3)(b), F.S.

¹¹ *Id.*

- The applicant submits one of the valid firearm certificates required for a Class “K” Firearms Instructor initial license and provides proof of having completed requalification training during the previous two years of the licensure period.

Class “K” Firearms Instructor License Application and Training Requirements

Class “K” Firearms Instructor Licensees provide classroom or range instruction to applicants for a Class “G” Statewide Firearm License.¹² Applicants for an initial Class “K” Firearms Instructor License must submit one of the following certificates to demonstrate continued firearms qualifications:¹³

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certificate.
- A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than three years before the submission of the application.
- A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than three years before the submission of the application.

The initial applicant must also pay the fee and pass an examination administered by DACS.¹⁴

Class “K” Firearms Instructor Licensees must renew their license every three years¹⁵ and submit one of the firearms qualification certificates, required for initial licensure, as proof that he or she remains certified to provide firearms instruction.¹⁶ A Class “K” Firearms Instructor Licensee who fails to file a renewal application on or before its expiration must renew the license by fulfilling all renewal application requirements and pay a late fee equal to the amount of the Class “K” Firearms Instructor fee.¹⁷

License Renewal Late Fee

Failure of a private investigative, private security, or recovery services licensee to renew a license on or before its expiration requires the licensee to:

- Renew his or her license by fulfilling the applicable renewal requirements; and
- Pay a late fee equal to the amount of the license fee.¹⁸

Recovery Agent and Security Officer School or Training Facility

Any school, training facility, or instructor who offers training for Class “E” Recovery Agents, Class “EE” Recovery Agent Interns, or Class “D” Security Officers, must file an application containing certain information with DACS along with an application fee of up to \$60. The application must be signed and verified by the applicant “under oath” as provided in s. 92.525, F.S., which authorizes documents to be verified in the following three ways:

- Under oath or affirmation taken or administered before a judge, clerk or deputy clerk of court, or any notary public;
- Under oath or affirmation taken or administered by law enforcement officer, correctional officer, or traffic officer by electronic means or in the physical presence of the affiant; or
- By signing a written declaration.¹⁹

However, since the law specifies that applications must be verified “under oath,” the law does not allow for electronic verification of applications.

¹² Ss. 493.6101(14) and 493.6115(7), F.S.

¹³ S. 493.6105(6)(a), F.S.

¹⁴ S. 493.6105(6)(b), F.S.

¹⁵ S. 493.6113(1), F.S.

¹⁶ S. 493.6113(3)(d), F.S.

¹⁷ S. 493.6113(4), F.S.

¹⁸ S. 493.6113(4), F.S.

¹⁹ S. 493.6304(2) and 493.6406(2), F.S.

Publication to the Industry

DACS is authorized to periodically publish newsletters and pamphlets advising private investigative, private security, and recovery services licensees of certain information that is of interest to the industry as well as the legal authority, rights, and obligations for various classes of licensure. The newsletter also contains administrative complaints against licensed or unlicensed persons or agencies. The newsletter must be published between two to four times annually, while the pamphlet must be updated every two years as necessary.²⁰

Division of Consumer Services

The Division of Consumer Services (DCS) within DACS is the state's clearinghouse for consumer complaints, information and protection. The DCS regulates various businesses, such as charitable organizations and telemarketers. In addition, the DCS protects consumers and businesses from unfair and unsafe business practices across a wide range of industries, including antifreeze, brake fluid, gasoline, liquefied petroleum (LP) gas, pesticides, water vending machines, and weighing and measuring devices.²¹

Charitable Organization Fees

Organizations that intend to solicit donations in Florida are required to register with DACS pursuant to the Solicitation of Contributions Act (Act).²² The Act contains basic registration, financial disclosures, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. Every charitable organization, sponsor,²³ or parent organization²⁴ must pay a single registration fee as follows:²⁵

- Ten dollars if the contributions:
 - Received for the last fiscal year were less than \$5,000; or
 - Actually raised or received from the public during the immediately preceding fiscal year are no more than \$25,000 and the fundraising activities are carried on by certain entities who are not compensated.
- Seventy-five dollars if the contributions received for the last fiscal year were \$5,000 or more, but less than \$100,000.
- One hundred twenty-five dollars if the contributions received for the last fiscal year were \$100,000 or more but less than \$200,000.
- Two hundred dollars if the contributions received for the last fiscal year were \$200,000 or more but less than \$500,000.
- Three hundred dollars if the contributions received for the last fiscal year were \$500,000 or more but less than \$1 million.
- Three hundred fifty dollars if the contributions received for the last fiscal year were \$1 million or more but less than \$10 million.
- Four hundred dollars if the contributions received for the last fiscal year were \$10 million or more.

²⁰ S. 493.6123(1), F.S.

²¹ Department of Agriculture and Consumer Services, <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services> (last visited Mar. 16, 2023).

²² See ch. 496, F.S.

²³ S. 496.404(25), F.S., defines a “sponsor” as a group or person who holds herself or himself out to be soliciting contributions by the use of a name that implies the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and the group or person is not a charitable organization.

²⁴ S. 496.404(18), F.S., defines a “parent organization” as part of a charitable organization or sponsor that coordinates, supervises, or exercises control over policy, fundraising, and expenditures or assists or advises one or more of the organization’s chapters, branches, or affiliates in Florida.

²⁵ S. 496.405(4)(a), F.S.

Certain persons and organizations are exempt from the registration fee requirements including a charitable organization that has less than \$25,000 in total revenue so long as they did not employ professional solicitors or have paid employees.²⁶

Liquefied Petroleum Gas

The Bureau of Compliance within the DCS is responsible for regulating the LP gas industry, including licensing, inspection, training, and examination requirements.²⁷ These responsibilities ensure that those persons engaged in LP gas-related business activities in this state are trained and that compliance with acceptable safety codes and standards is achieved statewide.²⁸

LP gas is defined in statute as any material composed predominantly of any of the following hydrocarbons, or mixtures of the same:

- Propane;
- Propylene;
- Butanes (normal butane or isobutane); and
- Butylenes.²⁹

Current law provides licensing requirements for businesses that engage in certain LP gas-related activities, including sales, installations, service and repair work, manufacture of equipment, and other miscellaneous activities. DACS is required to license applicants that it determines to be competent, qualified, and trustworthy. Violations for willfully operating without a license are a third degree felony.³⁰

The license categories and associated fees are as follows:³¹

License Category	Annual License Fee
Category I LP Gas Dealer	\$400
Category II LP Gas Dispenser	\$400
Category III LP Gas Cylinder Exchange Unit Operator	\$65
Category IV Dealer in Appliances and Equipment	\$65
Category V LP Gas Installer	\$200
Category VI Miscellaneous Operator	\$200

Licensees may renew their license annually, biennially, or triennially, and must meet the same requirements and conditions, including fee amounts, for each licensed year. An expired license will become inoperative, and the fee for restoration of an expired license is equal to the original license fee and must be paid before the licensee is allowed to resume operations.³²

DACS is responsible for enforcing reasonable standards of competency, including, but not limited to, the training, licensure, testing, and qualifying of persons participating in the LP gas industry.³³ DACS is also authorized to adopt rules that are:³⁴

- In the interest of public health, safety, and welfare and which promotes the safe handling of LP gas, equipment, and systems; and

²⁶ S. 496.406(1)(d), F.S.

²⁷ See ch. 527, F.S.

²⁸ Department of Agriculture and Consumer Services, *LP Gas Training*, <https://www.fdacs.gov/Business-Services/LP-Gas-Inspection/LP-Gas-Training> (last visited Mar. 16, 2023).

²⁹ S. 527.01(1), F.S.

³⁰ S. 527.02, F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

³¹ *Id.*

³² S. 527.03, F.S.

³³ S. 527.055(1)(b), F.S.

³⁴ S. 527.06, F.S.

- Reasonably necessary to assure the competence of persons to safely engage in the business of LP gas.

According to the DACs website, training is required for all employees of an LP gas-related business, and refresher training must be conducted at three-year intervals.³⁵ In addition, any person applying for a license to engage in Category I LP Gas Dealer, Category II LP Gas Dispenser, or Category V LP Gas Installer activities must prove competency by passing a written examination administered by DACS or its agent.³⁶

DACS is required to promulgate and enforce rules setting forth minimum general standards covering the “design, construction, location, installation, and operation” of LP gas equipment.³⁷ Currently, the definitions for Category I LP Gas Dealers, and Category V LP Gas Installers, do not include the term “design” in the description of services listed that such LP gas licensees are authorized to perform.³⁸ According to DACS, the national industry standards of the National Fire Protection Association for the storage and handling of LP gases as published in NFPA 58, Liquefied Petroleum Gas Code, 2020 Edition, which is adopted by rule, “contemplates that liquefied petroleum professionals can design such systems within their expertise.”³⁹

Gasoline and Oil Inspections

Current law governing gasoline and oil inspections in the state makes DACS responsible for monitoring the accuracy of Florida's gas pumps, scales, price scanners, and other commercial weighing and measuring devices to promote a fair and equitable marketplace and protect consumers. This includes the inspection of retail gas stations to ensure that fuel dispensers are working safely and properly.⁴⁰

As part of these responsibilities, DACS is required to inspect all gas pumps used in selling or distributing petroleum fuel at wholesale and retail, and affix a sticker to each gas pump signifying that the device has been inspected and the owner is responsible for its proper use and maintenance.⁴¹

A gas pump found to be operating outside the tolerances defined by DACS must be deemed inaccurate and DACS is required to either:⁴²

- Give the owner or manager reasonable time to repair the measuring device; or
- Condemn or prohibit the further use of the measuring device by using an appropriate security seal.

It is unlawful to operate a gas pump that has been condemned or prohibited from further use without the written consent of DACS. It is also unlawful to break, cut, or remove any seal applied by DACS to a gas pump or container. The seal may be broken by a DACS registered meter mechanic to repair or adjust a gas pump. However, after repairs and adjustments are complete, the adjusting mechanism must immediately be resealed by the mechanic who must immediately notify DACS of this action.⁴³

All persons and service agencies that repair or install gas pumps are required to register with DACS and report to DACS when installing a gas pump.

Gas Pump Security Measures

³⁵ Department of Agriculture and Consumer Services, *LP Gas Training*, <https://www.fdacs.gov/Business-Services/LP-Gas-Inspection/LP-Gas-Training> (last visited Mar. 27, 2023).

³⁶ S. 527.0201(1), F.S.

³⁷ S. 527.06(2), F.S.

³⁸ S. 527.01(6) and (10), F.S.

³⁹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2023 Senate Bill 1150, p. 2 (Mar. 8, 2023).

⁴⁰ Department of Agriculture and Consumer Services, *Weights and Measures*, <https://www.fdacs.gov/Business-Services/Weights-and-Measures> (last visited Mar. 27, 2023).

⁴¹ S. 527.07(1), F.S.

⁴² S. 527.07(4), F.S.

⁴³ S. 527.07(7), F.S.

Gas pump owners and operators are required to have a security measuring device affixed or installed on the gas pump to restrict the unauthorized access of customer payment card information.⁴⁴ The security measure must include one or more of the following:

- Pressure-sensitive security tape over the panel opening that leads to the scanning device to restrict the unauthorized opening of the panel.
- A device or system that will render the gas pump or scanning device in the gas pump inoperable if there is an unauthorized opening of the panel.
- A device or system that encrypts the customer payment card information.
- A physical locking mechanism that requires an access key unique to each station to restrict the unauthorized access of customer payment card information.
- An alarm to alert the owner or operator if there is an unauthorized opening of the panel.
- A daily inspection of each gas pump using an anti-skimmer application that detects wireless-based skimmers.
- A device or system that permits customers to use a contactless payment method.
- Another security measure approved by DACS.

Effective January 1, 2022, gas pump owners and operators must have at least two of the security measures affixed or installed on the gas pump. A gas pump without a security measure or with an illegal skimming or filtering device or an altered or damaged security measure, upon discovery by DACS, is prohibited from further use until the security measure is installed, replaced, or repaired. DACS is authorized to take gas pumps that do not have the two security measures out of service until compliance is restored, and may seize without warrant any skimming device for use as evidence.⁴⁵

The regulation of gas pumps is preempted to the state.⁴⁶

Retail Theft

The chapter of Florida law governing theft, robbery, and related crimes,⁴⁷ defines “theft” as knowingly obtaining, using, or attempting to obtain or use another's property, with the intent to permanently or temporarily:

- Deprive the person of the property, or
- Appropriate the property to an unauthorized use.⁴⁸

The penalties for theft depend on several factors, such as the amount stolen, the type of property or services stolen, and the circumstances involved. Violations for theft offenses are characterized as “grand theft” and “petit theft.”

The lowest level theft offense is petit theft of the second degree, which includes theft of property valued at less than \$100. Petit theft of the second degree is a second degree misdemeanor,⁴⁹ punishable by a term of up to 60 days in jail and a \$500 fine.⁵⁰

The most serious level theft offense is grand theft of the first degree, which can include theft of property valued at \$100,000 or more, cargo valued at more than \$50,000 which has entered interstate or intrastate commerce, any grand theft in which the offender uses a getaway car, and any grand theft that causes more than \$1,000 worth of property damage. Grand theft of the first degree is a first degree felony,⁵¹ punishable by a term of imprisonment of not more than 30 years and a fine up to \$10,000.⁵²

⁴⁴ S. 527.07(10), F.S.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *See* ch. 812, F.S.

⁴⁸ S. 812.014(1), F.S.

⁴⁹ S. 812.014(3)(a), F.S.

⁵⁰ Ss. 775.082 and 775.083, F.S.

⁵¹ S. 812.014(2)(d) and (e), F.S.

⁵² Ss. 775.082 and 775.083, F.S.

“Retail theft” is defined as “the taking possession of or carrying away of merchandise,⁵³ property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant⁵⁴ of possession, use, benefit, or full retail value.”⁵⁵

It is a third degree felony to commit retail theft, if the property stolen is valued at \$750 or more, and the person individually or in concert with one or more other persons, commits retail theft in certain situations.⁵⁶

Seized or Forfeited Property

The Florida Contraband Forfeiture Act (FCFA)⁵⁷ provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of the law.⁵⁸ Contraband and other property may be seized when utilized during a violation of, or for the purpose of violating, the FCFA. Property constituting a “contraband article” includes, but is not limited to the following items:⁵⁹

- Motor fuel upon which the motor fuel tax has not been paid as required by law;
- Vehicles of any kind which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony; and
- Personal property including equipment, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony.

Currently, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the FCFA, or in, upon, or by means of which any violation of the FCFA has taken or is taking place, may be seized and forfeited.⁶⁰

Retail Fuel Theft (Pulsar Manipulation Devices)

According to reports, recently, fuel thieves have been caught using homemade devices to steal fuel from retail gas pumps. Gas pumps are currently outfitted with a device called a pulsar that counts the gallons being pumped. Criminals will break into the gas pump, install a device to manipulate or reengineer the current pulsar, and allow fuel to flow without counting the gallons. This allows criminals to pump fuel without being charged.⁶¹

In Hillsborough County, \$60,000 worth of gasoline was stolen from two different gas stations by individuals using the pulsar manipulation devices.⁶² In Lakeland, two individuals were caught while filling up a large gas tank in the back of a pickup truck after accessing the inside of the fuel pump.⁶³

The use of these devices is not just an issue in Florida. It is happening in other states as well. The Arizona Senate is considering a bill that would make the possession of a “pulsar manipulation device” a

⁵³ “Merchandise” means “any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.” S. 812.015(1)(a), F.S.

⁵⁴ “Merchant” means “an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.” S. 812.015(1)(b), F.S.

⁵⁵ S. 812.015(1)(d), F.S.

⁵⁶ S. 812.015(8), F.S.

⁵⁷ See ss. 932.701-932.7062, F.S.

⁵⁸ S. 932.701(1), F.S.

⁵⁹ S. 932.701(2)(a)4., 5., and 7., F.S.,

⁶⁰ S. 932.703(1)(a), F.S.

⁶¹ MCS Petroleum, *Dispenser Security*, <https://mcspetroleum.com/security/> (last visited Mar. 16, 2023).

⁶² Matthew Impelli, *Fuel Thieves Used ‘Homemade Device’ to Steal \$60,000 in Gas*, *Police Say*, Newsweek, April 4, 2022, <https://www.newsweek.com/fuel-thieves-used-homemade-device-steal-60000-gas-police-say-1694856> (last visited Mar. 16, 2023).

⁶³ Catherine Hawley, *Florida men accused of tampering with gas pumps, stealing fuel in Bay area*, Fox 13 News, March 17, 2022, <https://www.fox13news.com/news/florida-men-accused-of-tampering-with-gas-pumps-stealing-fuel-in-bay-area> (last visited Mar.16, 2023).

class 3 felony.⁶⁴ The bill defines the term pulsar manipulation device as “a mechanical or electronic device that can manipulate the dispenser meter of a fuel pump.”⁶⁵

According to DACS:⁶⁶

- Possession of such devices is legal in Florida.
- Law enforcement agencies throughout Florida continue to report pulsar compromises at gas stations.
- Law enforcement currently relies on a statute to prosecute fuel theft crimes that does not address fuel pulsars.⁶⁷

Effect of Proposed Changes

The bill streamlines licensure requirements and reduces fees related to the private investigative, private security, and recovery services industries, including Class “G” Statewide Firearm Licenses and Class “K” Firearms Instructors, reduces registration fees for certain charitable organizations, clarifies the services that LP gas licensees are authorized to conduct, and provides criminal penalties for retail fuel theft violations.

The bill authorizes former military firearms instructors to use their experience in the military to satisfy a training requirement when applying for a Class “K” Firearms Instructor License. Specifically, the bill allows applicants for a Class “K” Firearms Instructor License to submit a valid DD Form 214 issued by the U.S. Department of Defense not more than three years before the submission of the applicant's Class “K” application, indicating that the applicant has been honorably discharged and served no less than three years in the military as a firearms instructor.

The bill authorizes DACS to waive the four-hour annual firearms training requirement for a Class “G” Statewide Firearms License renewal if the applicant provides proof that he or she has completed annual firearms training in accordance with the requirements of the federal Law Enforcement Officers Safety Act.⁶⁸

The bill authorizes a Class “K” Firearms Instructor Licensee who is renewing their license to provide proof of having taught at least six 28-hour firearms instruction courses to Class “G” applicants during the previous 3-year license period in lieu of having to provide proof of certification by the Florida Criminal Justice Standards and Training Commission, the NRA, or a federal law enforcement agency.

The bill makes the automatic late fee for late filed private investigative, security, or recovery services license renewal applications discretionary instead of mandatory.

The bill authorizes DACS to publish all information related to the private investigative, security, or recovery services industry newsletter and pamphlet online in lieu of paper format.

The bill removes the requirement for Class “E” Recovery Agents, Class “EE” Recovery Agent Interns, or Class “D” Security Officers to sign and verify their training application under oath, thereby allowing such applications to be signed and verified electronically.

The bill increases the contribution thresholds that are used to determine the assessment and exemption of registration fees for charitable organizations, sponsors, or parent organizations, which will have the effect of lowering fees and registration requirements for such organizations that are not in the higher income categories. Specifically, the bill:

⁶⁴ Morgan Loew, *Arizona Senate committee votes to outlaw fuel theft devices*, 3TV/CBS 5, Feb. 3, 2023, <https://www.azfamily.com/2023/02/03/arizona-senate-committee-votes-outlaw-fuel-theft-devices/> (last visited Mar. 16, 2023).

⁶⁵ AZ SB1177 (2023).

⁶⁶ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2023 Senate Bill 1150, p. 2 (Mar. 8, 2023).

⁶⁷ S. 316.80, F.S.

⁶⁸ See 18 U.S.C., ss. 926B-926C.

- Raises the \$25,000 maximum contribution threshold to \$50,000 for organizations that are required to pay a \$10 registration fee. Currently, organizations with maximum contributions between \$25,000 and \$100,000 are required to pay a \$75 registration fee.
- Raises the \$25,000 total revenue threshold to \$50,000 for charitable organizations and sponsors that are exempt from registration requirements.

The bill revises the definition of a Category I LP Gas Dealer to include any person who “designs” the apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas.

The bill revises the definition of a Category V LP Gas Installer to include a person whose services include the “design” of apparatus, piping, tubing, tanks, and equipment for the use of liquefied petroleum or natural gas.

The bill creates criminal offenses relating to retail fuel theft as follows:

- A person commits a third degree felony if he or she willfully, knowingly, and without authorization:
 - Breaches or accesses any internal portion of a retail fuel dispenser; or
 - Possesses any device constructed for the purpose of fraudulently altering, manipulating, or interrupting the normal functioning of a retail fuel dispenser.
- A person commits a second degree felony⁶⁹ if he or she willfully, knowingly, and without authorization:
 - Physically tampers with, manipulates, removes, replaces, or interrupts any mechanical or electronic component located within the internal portion of a retail fuel dispenser; or
 - Uses any form of electronic communication to fraudulently alter, manipulate, or interrupt the normal functioning of a retail fuel dispenser.
- A person commits a third degree felony if he or she:
 - Obtains fuel as a result of violating any provision relating retail fuel theft in s. 812.0151, F.S.; or
 - Modifies a vehicle’s factory installed fuel tank or possesses any item used to hold fuel which was not fitted to a vehicle or conveyance at the time of manufacture with the intent to use such fuel tank or item to hold or transport fuel obtained by violating any provision relating to retail fuel theft in s. 812.0151, F.S.

Under the bill, a person commits a third degree felony if he or she aids, abets, or assists a person in violating any provision relating to retail fuel theft in s. 812.0151, F.S.

The bill provides that any conveyances, vehicles, fuel tanks, and other equipment used or intended to be used in a violation of this section, and any fuel acquired in violation of this section, is subject to seizure and forfeiture as provided by the Florida Contraband Forfeiture Act. Law enforcement agencies that seize fuel must remove and reclaim, recycle, or dispose of all the fuel as soon as practicable in a safe and proper manner. Upon conviction of a person arrested for a violation of retail fuel theft, the judge must issue an order adjudging and declaring that all conveyances, vehicles, fuel tanks, and other equipment that was used or intended to be used to commit a violation are forfeited and directing their destruction, with the exception of the conveyance or vehicle.

The bill provides that any person convicted of a violation of retail fuel theft is responsible for the following:

- All reasonable costs incurred by the investigating law enforcement agency, including, but not limited to cost for:
 - The towing and storage of the conveyance or vehicle;
 - Removal and disposal of the fuel; and
 - Storage and destruction of all fuel tanks and other equipment described and used or intended to be used in the violation.

⁶⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

- Payment, to the party from whom it was fraudulently obtained, for the retail value of any associated fuel at the time of the underlying act.

The bill defines the term "fuel" to include any of the following:

- Alternative fuel as defined in s. 525.01, F.S.
- Aviation fuel as defined in s. 206.9815, F.S.
- Diesel fuel as defined in s. 206.86, F.S.
- Gas as defined in s. 206.9925, F.S.
- Motor fuel as defined in s. 206.01, F.S.
- Natural gas fuel as defined in s. 206.9951, F.S.
- Oil as defined in s. 206.9925, F.S.
- Petroleum fuel as defined in s. 525.01, F.S.
- Petroleum product as defined in s. 206.9925, F.S.

B. SECTION DIRECTORY:

- Section 1: Amends s. 493.6105, F.S.; making a technical change; revising requirements for applicants for a Class "K" license.
- Section 2: Amends s. 493.6113, F.S.; revising the circumstances under which DACS may waive firearms training requirements; revising requirements for applicants for a Class "K" license; requiring the Division of Licensing to establish a specified late fee by rule.
- Section 3: Amends s. 493.6123, F.S.; authorizing DACS to publish certain information online in lieu of using a paper format.
- Section 4: Amends s. 493.6304, F.S.; relating to security officer school or training facilities.
- Section 5: Amends s. 493.6406, F.S.; relating to recovery agent school or training facilities.
- Section 6: Amends s. 496.405, F.S.; revising requirements relating to registration fees for certain charitable organizations, sponsors, and parent organizations.
- Section 7: Amends s. 496.406, F.S.; relating to exemption from registration for charitable organizations and sponsors.
- Section 8: Amends s. 527.01, F.S.; revising the definitions of the terms "Category I liquefied petroleum gas dealer" and "Category V LP gas installer."
- Section 9: Creates s. 812.0151, F.S.; relating to retail fuel theft.
- Section 10: Reenacts s. 366.032(1)(e), F.S.
- Section 11: Reenacts s. 489.105(3)(m), F.S., F.S.
- Section 12: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector. The bill streamlines professional licensure requirements, allows for reduced late fees for license renewals, reduces registration fee requirements for charitable organizations, expands services that certain LP gas licensees may conduct, and provides fuel theft protections for gas station owners and operators.

Class “K” Firearms Instructors may experience an indeterminate reduction in demand for their services to the extent they will not be used due to the waiver of their annual firearms training for Class “G” Statewide Firearms License renewals.

D. FISCAL COMMENTS:

The fiscal impact to the state is indeterminate. According to DACS, “the majority of the provisions of the bill pose a negligible fiscal impact to the department based on the waiver and exemption of fees proposed.”⁷⁰

The creation of additional felony violations associated with retail fuel theft may cause an increase in prison beds for the Department of Corrections. However, there are existing felony violations that are currently being utilized where the new fuel theft offenses will be utilized. It is unknown how many new violations will occur.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Article VII, Section 19 of the Florida Constitution requires a supermajority vote to impose or raise a tax or fee. Under this provision, “Raise” means:

- a. “To increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
- b. To increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
- c. To decrease or eliminate a state tax or fee exemption or credit.”

The bill allows DACS to provide reduced late fees for certain license renewals. The bill also increases the contribution thresholds that are used to determine the assessment and exemption of registration fees for charitable organizations, which will have the effect of lowering fees for such

⁷⁰ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2023 Senate Bill 1150, p. 2 (Mar. 8, 2023).

organizations. It is unclear as to whether this would constitute the “raising” of a fee as defined in Art. VII s. 19.

B. RULE-MAKING AUTHORITY:

According to DACS, the DOL will need to create reasonable late fee requirements by administrative rule. Current law provides sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made technical changes to reorganize and clarify provisions in the bill relating to retail fuel theft.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.