

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Dockery, Vice Chair

MEETING DATE: Tuesday, March 29, 2011

TIME: 1:00 —3:00 p.m.

PLACE: James E. "Jim" King, Jr., Committee Room, 401 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Dockery, Vice Chair; Senators Flores, Gaetz, Lynn, Montford, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 296 Wise (Identical H 901)	Household Moving Services; Provides for the biennial renewal of mover and moving broker registrations. Authorizes a mover to exclude liability for household goods packed by the shipper under certain circumstances. Authorizes a mover to refuse to transport or ship household goods under certain circumstances. Prohibits a mover or moving broker from conducting business without being registered with the Department of Agriculture and Consumer Services, etc.	
		CM 03/16/2011 Temporarily Postponed CM 03/29/2011 CA BC	
2	CS/SB 364 Children, Families, and Elder Affairs / Latvala (Similar CS/H 139)	Child Care Facilities; Provides for certain household children to be included in calculations regarding the capacity of licensed family day care homes and large family child care homes. Provides conditions for supervision of household children of operators of family day care homes and large family child care homes. Revises advertising requirements applicable to child care facilities. Provides penalties, etc.	
		CF 03/09/2011 Fav/CS CM 03/29/2011 JU BC	
3	SM 852 Hays (Identical HM 9)	Supporting the Marketing of Florida Seafood; Urges the Congress of the United States to support the marketing of Florida seafood.	
		EP 03/10/2011 Favorable CM 03/29/2011 AG	

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Commerce and Tourism

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1224 Military Affairs, Space, and Domestic Security / Altman (Similar H 873, Compare S 1866)	Corporate Tax Credits and Refunds; Authorizes the Office of Tourism, Trade, and Economic Development to administer corporate income tax credits for spaceflight projects. Authorizes the Department of Revenue to share information relating to corporate income tax credits for spaceflight projects with the Office of Tourism, Trade, and Economic Development. Repeals provisions relating to a limitation on the maximum amount of tax refund a defense or space flight contractor may receive, etc. MS 03/17/2011 Fav/CS CM 03/29/2011 BC	
5	SB 1318 Benacquisto (Identical H 879)	Tax Refund Program/Target Industry Businesses; Revises the criteria for the determination of target industry businesses by the Office of Tourism, Trade, and Economic Development. CM 03/29/2011 BC	
6	SB 1460 Bennett (Identical H 1175)	Energy Economic Zones; Includes energy economic zones in the pilot program implementing an alternative state review process. Exempts certain machinery and equipment used in the production of renewable energy in an energy economic zone from the tax on sales, use, and other transactions. Exempts certain building materials used in the rehabilitation of real property located in an energy economic zone from the tax on sales, use, and other transactions. Provides for expiration of the tax exemption for energy economic zones, etc. CM 03/29/2011 CU CA BC	
7	SB 1482 Evers (Similar H 1215)	Consumer Protection; Requires retail tire dealers to disclose to purchasers the date of manufacture and certain warnings relating to the age of tires. Provides certain exceptions. Provides that a violation of the act is a deceptive and unfair trade practice. Provides penalties. Requires the Department of Legal Affairs to adopt rules. CM 03/29/2011 JU BC	

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Commerce and Tourism

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1506 Ring (Identical H 1199)	Corporate Income Tax; Provides for the apportionment of certain taxpayer's adjusted federal income solely by the sales factor provided in specified provisions. Provides for eligibility based on the taxpayer's capital expenditures and number of full-time employees. Authorizes the Department of Revenue to examine and verify that a taxpayer has correctly apportioned its taxes. Authorizes the Office of Tourism, Trade, and Economic Development to approve and revoke approval of an application. Provides for the recapture of unpaid taxes, interest, and penalties, etc.	CM 03/29/2011 BC
9	CS/SB 1524 Communications, Energy, and Public Utilities / Simmons (Similar H 1231, Compare H 4149)	Telecommunications; Creates the "Regulatory Reform Act." Revises legislative intent with respect to the jurisdiction of the Florida Public Service Commission. Repeals provisions relating to price regulation, regulatory methods for small local exchange telecommunications companies, experimental and transitional rates, limited proceedings, procedures for seeking a stay of proceedings, joint rates, tolls, and contracts, rate adjustment orders, intrastate interexchange service contracts, and unlawful charges against consumers, respectively, etc.	CU 03/21/2011 Fav/CS CM 03/29/2011 BC
10	SB 1528 Altman (Identical H 753)	Secondary Metals Recyclers; Revises the period required for secondary metals recyclers to maintain certain information regarding purchase transactions involving regulated metals property. Prohibits secondary metals recyclers from purchasing regulated metals property without maintaining certain records. Limits civil liability of secondary metals recyclers under certain circumstances. Preempts to the state the regulation of secondary metals recyclers and purchase transactions involving regulated metals property, etc.	CM 03/29/2011 CA CJ BC

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Commerce and Tourism

Tuesday, March 29, 2011, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 1588 Latvala (Identical H 1333)	Licensed Security Officers; Provides that a person who engages in any activity for which a specified provision requires a license, but acts without having a license, commits a misdemeanor of the first degree. Authorizes the Department of Agriculture and Consumer Services to impose a civil penalty not to exceed a specified amount. Provides that a person who impersonates a security officer or other designated officer during the commission of a felony commits a felony of the second degree, etc. CM 03/29/2011 CJ BC	
12	SB 1916 Detert (Compare H 5007)	Department of Agriculture and Consumer Services; Renames the Division of Consumer Services within the department as the "Division of Consumer Protection." Revises the information that a person must supply in an application for licensure as a private investigator, private security service, or repossession service. Requires the department to investigate the mental fitness of an applicant of a Class "K" firearms instructor license. Requires an application for a security officer school or training facility to be verified under oath, etc. CM 03/29/2011 BC	
13	SB 1708 Jones (Similar H 1415, S 2050, Compare H 1417, H 1419, Link S 1710, S 1712)	Destination Resorts; Creates the Destination Resort Commission within the Department of Revenue. Exempts the Destination Resort Commission from specified provisions of the Administrative Procedure Act. Creates the Destination Resort Act. Specifies the powers of the commission, including the power to authorize limited gaming at up to five destination resorts, conduct investigations, issue subpoenas, take enforcement actions, and create an invitation to negotiate process to evaluate applications for a resort license, etc. CM 03/22/2011 Temporarily Postponed CM 03/29/2011 RI BC	

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Tuesday, March 29, 2011, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	SB 1710 Jones (Identical H 1417, Compare H 1415, Link S 1708)	Destination Resort Trust Fund/Dept. of Revenue; Creates the Destination Resort Trust Fund within the Department of Revenue. Provides for the purpose of the trust fund. Provides for future review and termination or re-creation of the trust fund. CM 03/22/2011 Temporarily Postponed CM 03/29/2011 RI BC	
15	SB 1712 Jones (Identical H 1419, Compare H 1415, Link S 1708)	Public Records/Destination Resort Commission; Provides an exemption from public records requirements for confidential and proprietary business information and trade secrets received by the Destination Resort Commission. Provides an exemption from public records requirements for information held that would reveal investigation techniques and procedures used by such commission. Provides an exception to the exemption for other governmental entities having oversight or regulatory or law enforcement authority. Provides penalties for an employee of the commission who violates the provisions of the act, etc. CM 03/22/2011 Temporarily Postponed CM 03/29/2011 RI GO	



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 72 - 126.

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

And the title is amended as follows:

Delete lines 13 - 18

and insert:

amending s. 507.07, F.S.; prohibiting a

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 Commerce and Tourism Committee

BILL: SB 296

INTRODUCER: Senator Wise

SUBJECT: Household moving services

DATE: March 15, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Pre-meeting
2.			CA	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill preempts local government ordinances regulating movers of household goods or moving brokers that were enacted after January 1, 2011. Therefore, local government ordinances enacted prior to January 1, 2011, may remain in effect, provided that such ordinances levy “reasonable” registration fees that do not exceed the cost of administering the ordinances. However, these existing ordinances only apply to a mover or moving broker if the mover or moving broker’s principal place of business is located in the jurisdiction having such an ordinance. The bill further clarifies that the preemption does not apply to a local government’s authority to levy local business taxes.

In addition, the bill:

- Excludes movers from liability in certain circumstances;
- Allows movers to refuse to transport a shipper’s packed goods under certain circumstances;
- Requires movers to register biennially, rather than annually, with the Department of Agriculture and Consumer Services; and
- Clarifies the definition of storage.

This bill substantially amends the following sections of the Florida Statutes: 507.01, 507.03, 507.04, 507.06, 507.07, and 507.13.

II. Present Situation:

Federal law expressly permits states to regulate the intrastate transportation of household goods.¹ Chapter 507, F.S., under which household moving services are regulated, “applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state.”²

Movers and Moving Brokers Registration

Section 507.01(9), F.S., defines “mover” to mean a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service.³ “Moving broker” is classified as a person who, for compensation, arranges for another person to load, transport, ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover by telephone, postal or electronic mail, Internet website, or other means.⁴

Section 507.03, F.S., requires that any “mover” or “moving broker” wishing to do business in Florida must register annually with the Department of Agriculture and Consumer Services (DACS). To obtain a registration certificate, the mover or moving broker must file an application, pay a \$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.⁵

Failure to comply with these intrastate registration requirements may subject a mover or moving broker to a “cease and desist order and fines of up to \$5,000.”⁶

Insurance Coverage and Liability Limitations

Section 507.04, F.S., requires that movers and moving brokers maintain liability and motor vehicle insurance. A mover operating more than two vehicles is required to maintain liability insurance coverage in the amount of at least \$10,000 per shipment, and the mover’s liability must not be less than 60 cents per pound per article.⁷ Movers operating two or fewer vehicles may maintain a performance bond or certificate of deposit in the amount of \$25,000, in lieu of maintaining liability insurance.⁸ All movers must maintain motor vehicle insurance coverage and the amount of coverage required is determined by the weight of the commercial motor vehicle.⁹

Contractual provisions that limit a movers liability for a shipper’s goods are required to be disclosed by the mover in writing to the seller along with the valuation rate “at the time that the

¹ See 49 U.S.C. 14501(c)(2)(B).

² Section 507.02(2), F.S.

³ Section 507.01(9), F.S.

⁴ Section 507.01(10), F.S.

⁵ Section 507.03(1), F.S.

⁶ Florida Department of Agriculture and Consumer Services, *Intrastate Moving Information For Businesses*, <http://www.800helpfla.com/moving.html> (last visited on February 2, 2011). See also, ss. 507.09 and 507.10, F.S.

⁷ Section 507.04(1)(a) and (4), F.S.

⁸ Section 507.04(1)(b), F.S.

⁹ Section 507.04(2)(a)-(c), F.S.

estimate and contract for services are executed” and prior to providing any moving services.¹⁰ Movers that offer valuation coverage must also inform the shipper “of the opportunity to purchase” such coverage in the disclosure.¹¹ However, any contract for moving services that seeks to limit a mover’s liability beyond the minimum valuation rate of “60 cents per pound per article” is void under s. 507.04(4), F.S.

Violations and Penalties

Current law regulates movers and moving brokers by specifying certain contract, delivery, and storage requirements.¹² Furthermore, s. 507.07, F.S., prohibits certain acts by movers and moving brokers and makes it a violation for movers and moving brokers to:

- Conduct or engage in the business of moving without first being registered annually with the department;
- Knowingly make a false statement, representation, or certification of a document required to be submitted or retained;
- Misrepresent or deceptively represent: the contract for services or inventory of goods; the timeframe for delivery or storage of goods; the price, size, nature, extent, qualities, or characteristics of services offered; or a shipper’s rights, privileges, or benefits;
- Fail to honor and comply with provisions of the contract for services;
- Withhold delivery of household goods against the wishes of the shipper and after the shipper has paid according to the estimate provided in the service contract;
- Include a contract provision purporting to waive or limit a shipper’s right or benefit as provided in this chapter;
- Seek or solicit a waiver or acceptance from a shipper of a provision limiting a shipper’s right or benefit;
- Solicit services without clearly disclosing the mover’s fixed business address;
- Commit any other act of fraud, misrepresentation, or failure to disclose a material fact;
- Refuse or fail, after notice, to produce any document or record or disclose any information required to be produced or disclosed; or
- Knowingly make a false statement in response to any request or investigation by DACS, the Department of Legal Affairs, or the state attorney.¹³

Movers that commit any of the above-listed prohibited acts may be subject to administrative, civil, or criminal penalties.¹⁴ Violations under ch. 507, F.S., may also be deemed an unfair or deceptive act or practice or unfair method of competition in violation of the Florida Deceptive and Unfair Trade Practices Act, subjecting a violator to a civil penalty of up to \$10,000 per violation.¹⁵

¹⁰ Section 507.04(4), F.S.

¹¹ *Id.*

¹² See ss. 507.05 and 507.06, F.S.

¹³ Section 507.07, F.S.

¹⁴ See ss. 507.09, 507.10, and 507.11, F.S.

¹⁵ Section 507.08, F.S.

Local Ordinances and Regulations

Currently, ch. 507, F.S., allows municipalities and counties to adopt local ordinances or regulations relating to the moving of household goods in addition to state regulations required by the statute.¹⁶ Broward, Miami-Dade, Palm Beach, Hillsborough, and Pinellas counties currently have ordinances regulating household moving.¹⁷ Movers or moving brokers whose principal place of business is located in a county or municipality that has such ordinances requiring local licensing or registration are required to obtain local registration in addition to registering with the state.¹⁸ Florida law also allows for local taxes, fees, and bonding related to movers and moving brokers.¹⁹

Chapter 205, F.S., authorizes a local government to levy a business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction, called a local business tax.²⁰ The local business tax “does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection,” which are “in addition to, but not in lieu of,” the local business tax.²¹

According to the Federal Motor Carrier Safety Administration (FMCSA), Florida, California, New York, and New Jersey are “hot spots” for moving fraud.²² The FMCSA has partnered with state attorneys general, local law enforcement agencies, and industry and consumer groups to oversee and prevent fraud in the moving industry.²³

III. Effect of Proposed Changes:

SB 296 amends the requirements for household moving services and preempts certain local ordinances and regulations. The following paragraphs outline the sections of the bill.

Section 1 amends s. 507.01, F.S., to narrow the definition of the term “storage” to mean the “temporary” warehousing of a shipper’s goods while under the care, custody, and control of a mover. This section clarifies the definition of storage, limiting it to the warehousing of a shippers goods on a temporary basis. Many movers store a shipper’s goods for a short period of time in order to combine loads from different shippers to reduce costs.

Section 2 amends s. 507.03, F.S., to change the registration renewal requirement by providing for a biennial requirement instead of an annual requirement. This section also grants the DACS the authority to extend the registration expiration date up to 12 months in order to establish staggered expiration dates of movers to prevent the department from receiving an influx of

¹⁶ Section 507.13(1), F.S.

¹⁷ Information received from the Department of Agriculture and Consumer Services on February 4, 2011. Information is on file with the Commerce and Tourism Committee.

¹⁸ Section 507.03(4), F.S.

¹⁹ See s. 507.13(1), F.S.

²⁰ Local business taxes were formerly known as “local occupational license taxes.” See ch. 2006-152, L.O.F.

²¹ See s. 205.022(5), F.S.

²² See Federal Motor Carrier Safety Administration, *Background: The Regulation of Household Goods Movers*, <http://www.protectyourmove.gov/about/background/background.htm> (last visited February 10, 2011).

²³ *Id.*

registration renewals and to allow for more efficient processing of renewals. The registration fee will continue to be calculated at the rate of \$300 per year.

Additionally, this section removes the requirement that movers and brokers obtain a local license or register locally, and deletes the provision requiring movers and moving brokers to pay for local license or registration fees in addition to the state registration fee.²⁴ However, movers and brokers are still required to pay the state registration fee required under s. 507.03, F.S.

Section 3 amends s. 507.04, F.S., to allow a mover to exclude liability for items packed by the shipper, if the shipper declines in writing to allow the mover to inspect the box or crate containing the items, and the mover declares his or her exclusion from such liability.

Section 4 amends s. 507.06, F.S., to allow a mover to refuse to transport or ship any of a shipper's household goods, as long as the shipper is notified of, and acknowledges in writing, the mover's refusal. This section also changes the catch line to include "transportation or shipment" to correspond with the new language proposed in this section of the bill.

Section 5 amends s. 507.07, F.S., to make technical changes to the language in order to comport with the language amending s. 507.03, F.S., in section 2 of the bill, which would require movers to register biennially, instead of annually, with DACS.

Section 6 amends s. 507.13, F.S., to preempt local governments from enacting ordinances regulating movers of household goods or moving brokers. However, ordinances enacted before January 1, 2011, or amendments to those ordinances, may remain in effect, provided such ordinances levy "reasonable" registration fees that do not exceed the cost of administering the ordinances. Additionally, these existing ordinances apply only to a mover or moving broker if the mover or moving broker's principal place of business is located within the jurisdiction having such an ordinance.

This section also clarifies that the preemption does not apply to a local government's authority to levy a local business tax, pursuant to ch. 205, F.S.

Section 7 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of Article 18, Section VII of the Florida Constitution, prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

²⁴ Note: Section 6 of the bill addresses local registration requirements of movers and moving brokers.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times 10 cents (which is \$1.89 million for FY 2010/11), are exempt.²⁵

The Revenue Estimating Conference met on February 22, 2011, and determined that the effect on General Revenue cash for 2011-12 is insignificant, with a \$100,000 effect on State Trust funds and an indeterminate local impact.

This bill limits a local government’s authority to levy registration fees and the amount of such registration fees for movers of household goods. To the extent this bill may be construed as a reduction of a county or municipalities revenue generating authority, it is subject to the restriction in subsection (b). However, it may be exempted from the restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Retroactive Application

Section 6 of the bill provides that it will operate retroactively to January 1, 2011. This will affect local ordinances or regulations adopted between January 1, 2011, and July 1, 2011, the bill’s effective date. Even when the Legislature clearly intends for a statute to apply retroactively, a court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty.²⁶ However, statutes which do not alter contractual or vested rights, but relate only to procedure can be applied retroactively.²⁷

Florida courts have recognized that a statute may be retroactively applied if:

- There is clear evidence that the Legislature intended to apply the statute retroactively; and
- Retroactive application is constitutionally permissible.²⁸

²⁵ See: Demographic Estimating Conference – Florida Demographic Forecast <http://edr.state.fl.us/Content/conferences/population/index.cfm>.

²⁶ *Menendez v. Progressive Express Ins. Co.*, 35 So.3d 873 (Fla. 2010).

²⁷ *Id.*

²⁸ *Metropolitan Dade County v. Chase Fed. Housing Corp.*, 737 So. 2d 494 (Fla. 1999); *Promontory Enterprises, Inc. v. Southern Engineering & Contracting, Inc.*, 864 So. 2d 479 (Fla. 5th DCA. 2004).

In determining whether a retroactive application is constitutional, courts have generally held that due process considerations prevent the retroactive abolition of vested rights.²⁹ This is not an absolute rule, however, because the courts have identified factors that may be considered in determining whether to allow retroactivity. In one case, the Supreme Court weighed three factors in considering the validity of retroactivity:

- The strength of the public interest served by the statute;
- The extent to which the right affected is abrogated; and
- The nature of the right affected.³⁰

Since this bill is aimed at local governments and not private citizens, it is unlikely that it will create due process concerns.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Preemption of local government ordinances could lead to a loss of revenue from registration fees for local governments. Local governments that currently regulate household movers prior to January 1, 2011, may experience a loss in revenue because they will only be permitted to collect “reasonable” registration fees necessary to cover the administrative costs of ordinances.

B. Private Sector Impact:

To date there are 808 intrastate movers and 6 moving brokers in the State of Florida.³¹ This bill may reduce business costs on household movers and moving brokers by requiring reasonable local registration fees limited to the amount of administering the ordinance or regulation.

This bill reduces the administrative burden on intrastate movers by requiring registration biennially.³² A biennial registration renewal requirement at the current rate of \$300 per year would require movers and moving brokers to pay \$600 every other year instead of \$300 per year.

Section 3 of this bill allows a mover to declare exclusion from liability for items packed by a shipper, in which the shipper has declined in writing to allow the mover to inspect the shipped items. Under this provision, a shipper may not be able to hold a mover or moving broker liable if the shipper has not permitted the mover to inspect the shipped goods. Therefore, the shipper will be unable to collect reimbursement for damage done to shipped goods.

²⁹ *State Dept. of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981).

³⁰ *Id.*

³¹ *Supra* note 17.

³² Department of Agriculture and Consumer Services, *Senate Bill 296 Fiscal Impact* (January 21, 2011) on file with the Commerce and Tourism Committee.

C. Government Sector Impact:

According to DACS, the preemption on local government ordinances as framed in the bill will not expand the duties or responsibilities of the department.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.

³³ Information received from the Department of Agriculture and Consumer Services on February 7, 2011. Information is on file with the Commerce and Tourism Committee.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 17 and 18
insert:

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

402.281 Gold Seal Quality Care program.—

(4) In order to obtain and maintain a designation as a Gold
Seal Quality Care provider, a child care facility, large family
child care home, or family day care home must meet the following
additional criteria:

(c) The child care provider must not have been cited for



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the same class III violation, as defined by rule, three or more times and failed to correct the violation within 1 year after the date of each citation, within the 2 years preceding its application for designation as a Gold Seal Quality Care provider. Commission of the same class III violation three or more times and failure to correct within the required time during a 2-year period may ~~shall~~ be grounds for termination of the designation as a Gold Seal Quality Care provider until the provider has no class III violations for a period of 1 year.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to child care facilities; amending s. 402.281, F.S.; revising the criteria for a childcare facility, large family child care home, or family day care home to obtain and maintain a designation as a Gold Seal Quality Care provider; amending s.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Lynn) recommended the following:

Senate Amendment (with title amendment)

Between lines 181 and 182
insert:

Section 2. Section 402.316, Florida Statutes, is amended to
read:

402.316 Exemptions.—

(1) The provisions of ss. 402.301-402.319, except for the
requirements regarding screening of child care personnel, do
~~shall~~ not apply to a child care facility that ~~which~~ is an
integral part of church or parochial schools conducting
regularly scheduled classes, courses of study, or educational



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13 programs accredited by, or by a member of, an organization that
14 ~~which~~ publishes and requires compliance with its standards for
15 health, safety, and sanitation. Such standards must meet or
16 exceed the minimum health, safety, and sanitation standards as
17 prescribed under chapter 65C-22, Florida Administrative Code.
18 ~~However,~~ Such facilities shall meet minimum requirements of the
19 applicable local governing body as to health, sanitation, and
20 safety and shall meet the screening requirements pursuant to ss.
21 402.305 and 402.3055. Failure by a facility to comply with the
22 ~~such~~ screening requirements shall result in the loss of the
23 facility's exemption from licensure.

24 (2) A child care facility covered by the religious
25 exemption set forth in subsection (1) must display in a
26 conspicuous location at the facility its certificate of
27 compliance issued by the agency accrediting the child care
28 facility for a religious exemption. The certificate must state
29 that it is issued specifically for the purpose of providing the
30 child care facility with a religious exemption from licensure.

31 (3) ~~(2)~~ Any county or city with state or local child care
32 licensing programs in existence on July 1, 1974, will continue
33 to license the child care facilities as covered by such
34 programs, notwithstanding the provisions of subsection (1),
35 until and unless the licensing agency makes a determination to
36 exempt them.

37 (4) ~~(3)~~ Any child care facility covered by the exemption
38 provisions of subsection (1), but desiring to be included in
39 this act, is authorized to do so by submitting notification to
40 the department. Once licensed, such facility cannot withdraw
41 from the act and continue to operate.



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(5) A recognized accrediting agency for religious exemption may not own, operate, or administer a child care program that the agency accredits. This limitation applies to programs owned, operated, or administered by relatives of the accrediting agency who are within the fifth degree by blood or marriage.

(6) This section does not authorize the department to regulate or control the governance, curriculum, academic curriculum, testing or assessments, evaluation procedures, academic requirements of the staff, disciplinary practices, or hiring practices of any child care program under this section.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete line 9
and insert:

homes and large family child care homes; amending s.
402.316, F.S.; requiring that the health, safety, and
sanitation standards of an accrediting agency
applicable to child care facilities that are exempt
from licensure meet or exceed the minimum health,
safety, and sanitation standards set forth by the
Department of Children and Family Services; requiring
a child care facility to prominently display a
certificate indicating that the facility qualifies for
a religious exemption from licensure; prohibiting an
accrediting agency for religious exemption from
owning, operating, or administering a child care
program that it accredits, including a program owned
by relatives; providing that application of the



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71 accrediting standards does not authorize the
72 department to regulate or control the governance,
73 curriculum, testing or assessments, evaluation
74 procedures, academic requirements of the staff or the
75 disciplinary or hiring practices of any child care
76 program; amending s.

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 Commerce and Tourism Committee

BILL: CS/SB 364

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Latvala

SUBJECT: Child Care Facilities

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Fav/CS
2.	Hrdlicka	Cooper	CM	Pre-meeting
3.			JU	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

CS/SB 364 (the bill) creates a definition for “household children” in ch. 402, F.S., providing that the supervision of household children belonging to a family day care or large family child care home operator is to be left to the discretion of the operator, unless the children receive subsidized child care to be in the home. The bill also amends the definitions of “family day care home” and “large family child care home” to require that household children be included in the capacity calculation of those homes when the child is on the premises of the home or on a field trip with children enrolled in child care.

The bill expands the requirements for advertising by prohibiting a person from advertising (or publishing an advertisement) for a child care facility, family day care home, or large family child care home without including the license or registration number of the facility or home.

This bill amends the following sections of the Florida Statutes: 402.302, 402.318, and 411.01.

II. Present Situation:

Child Care Facilities

Licensing of Child Care Facilities

Child care facilities in the state must meet licensing standards that are established by the Department of Children and Family Services (DCF).¹ Current law permits a county that meets or exceeds the state's minimum licensing requirements to designate a local agency to license child care facilities. If the county does not wish to administer its own child care licensing program, it can contract with DCF to delegate administration of the standards to the department.² Currently, DCF is responsible for administering child care licensing in 61 of Florida's 67 counties.³ The remaining six counties (Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) administer their own inspections and licensure of child care facilities.⁴

Family Day Care Homes

Florida law defines a family day care home as "an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit."⁵ A family day care home is allowed to provide care for one of the following groups of children:

- A maximum of four children from birth to 12 months of age.
- A maximum of three children from birth to 12 months of age, and other children, for a total of six children.
- A maximum of six preschool children if all of them are older than 12 months of age.
- A maximum of 10 children if no more than five are preschool age and, of those five, no more than two are under 12 months of age.⁶

The above groups include children under 13 years of age who are related to the caregiver. However, these numbers do not include children under the age of 13 who reside in the caregiver's home but are not related to the caregiver.

Current law requires a family day care home to have either a license or be registered. A family day care home is required to be licensed if they are presently licensed under a county license ordinance or if the board of county commissioners passes a resolution that family day care homes are to be licensed.

If a family day care home is not subject to licensure by the county, then it must register annually with DCF. In order to register, the home must submit the following information:

¹ Section 402.305(1), F.S.

² Section 402.306(1), F.S.

³ Fla. Dep't of Children and Families, *Child Care Regulation, Licensing Information*, <http://www.dcf.state.fl.us/programs/childcare/licensing.shtml> (last visited 3/23/2011).

⁴ *Id.*

⁵ Section 402.302(8), F.S.

⁶ *Id.*

- The name and address of the home.
- The name of the operator.
- The number of children served.
- Proof of a written plan to provide at least one other competent adult to be available in place of the operator in an emergency.
- Proof of screening and background checks.
- Proof of successful completion of the 30-hour training course.
- Proof that immunization records are kept current.
- Proof of completion of the required continuing education units or clock hours.⁷

Large Family Child Care Homes

A large family child care home is similar in definition to a family day care home, except that a large family child care home has at least two full-time child care personnel on the premises during the hours of operation.⁸ One of these persons must be the owner or occupant of the residence. In order to become a large family child care home, the home must have first operated as a licensed family day care home for 2 years and the operator must have a child development associate credential, or its equivalent, for 1 year.⁹ A large family child care home may provide care for one of the following groups of children, which includes children under the age of 13 who are related to the caregiver:

- A maximum of eight children from birth to 24 months of age.
- A maximum of 12 children, with no more than four children under 24 months of age.¹⁰

However, these numbers do not include children under the age of 13 who reside in the caregiver's home but are not related to the caregiver.

DCF establishes by rule minimum standards for large family child care homes, which include requirements for staffing, maintenance of immunization records, minimum health standards, minimum safety standards, minimum square footage, and enforcement of these standards.¹¹

Supervision

DCF has promulgated administrative rules related to the supervision of children and staffing requirements for family day cares and large family child care homes. These rules apply to all children in the home, including children related to the operator. Specifically, operators are responsible for the supervision of children at all times, including when the children are napping or sleeping. If the child is sleeping in a bedroom, the bedroom's door must remain open. During hours of operation, all children must have adult supervision, consisting of watching and directing their activities both indoors and outdoors. If a child is sick and placed in isolation, the child must

⁷ Section 402.313(1)(a), F.S.

⁸ Section 402.302(9), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 402.3131(7), F.S.

remain within eyesight and hearing of the operator. Finally, children must be attended when being diapered or when changing clothes.¹²

Advertising

Florida law requires that any advertisement for a child care facility include within the advertisement the state or local agency license number of the facility. Failure to do so is a misdemeanor of the first degree.¹³

III. Effect of Proposed Changes:

Section 1 of the bill creates the definition “household children” in ch. 402, F.S., to mean “children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, the large family child care home operator, or an adult household member who permanently or temporarily resides in the home.” In general, this definition is the current interpretation of the department when calculating provider capacity.

The bill also provides that the supervision of household children belonging to a family day care or large family child care home operator is to be left to the discretion of the operator, unless the children receive subsidized child care to be in the home. DCF has indicated that this may inhibit a department inspector from correcting a situation where the inspector sees an operator’s child in a hazardous position.

Current law requires that children under the age of 13 who are related to the caregiver be included in determining a provider’s capacity. This bill amends the definitions of “family day care home” and “large family child care home” to provide that “household children” under the age of 13 are included in the calculations to determine the maximum number of children that an operator can supervise at one time when that child is on the premises of the home or on a field trip with children enrolled in child care at the home. In adding these provisions to the capacity requirements for these specified child care facilities, it could result in fewer non-household children being served at each of the respective residences, in any county that administer its own child care licensing and does not currently meet this proposed minimum licensing standard.

Section 2 of the bill amends s. 402.318, F.S., by requiring family day care homes and large family child care homes to include their license or registration number in their advertisements. Additionally, the bill provides that a person may not publish an advertisement for a child care facility, family day care home, or large family child care home without including the license or registration number.

Section 3 of the bill amends s. 411.01, F.S., to make technical and conforming changes.

Section 4 provides an effective date of July 1, 2011.

¹² Rule 65C-20.009(5), F.A.C.

¹³ Section 402.318, F.S. A first-degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year, a \$1,000 fine, or both. See ss. 775.082 and 775.083, 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:

Current law requires a “child care facility” to include its license number in any advertisement. This bill amends current law to extend advertising requirements on family day care homes and large family child care homes as well. To the extent that these homes are not considered child care facilities, and therefore are not currently required to place a license number in advertisements, the bill’s advertising requirements will be a new requirement on these homes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

DCF has stated that creating the definition of “household children” may create confusion and leave an enforcement loophole. Specifically DCF stated, “the bill’s intent appears to be that any child in the family day care home who is the provider’s responsibility must count against the home’s licensed child care capacity, but the definition of household children appears to exclude foster children, children unrelated to the owner/operator who may be in the home on a non-paying basis, children left in the care of the provider without legal documentation of guardianship, etc.”¹⁴

¹⁴ Dep’t of Children and Family Services, *Staff Analysis and Economic Impact, SB 364* (Jan. 7, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

DCF is responsible for administering child care regulations throughout Florida, unless a county has chosen to assume this regulatory function pursuant to s. 402.306, F.S., which requires that a county meet or exceed prescribed state standards regarding state child care. Pinellas County is one of seven counties which have chosen to designate a local licensing agency to license child care facilities in that county. The Pinellas County Labor Board for Children's Centers and Family Day Care Homes is the licensing body in Pinellas County.¹⁵ According to DCF, "[f]amily day care home providers have raised questions to the Department regarding supervision restrictions that may be placed on the children of owners and operators of child care programs operating from their homes as there have been some restrictions, specifically in Pinellas County, which has local licensing authority. Pinellas County family day care home providers have challenged their local ordinance on this issue."¹⁶ In order for this bill to have effect in Pinellas County, the county's law that regulates children's centers and family day care homes will need to be amended.¹⁷

VIII. Additional Information:

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

Committee Substitute by Children, Families, and Elder Affairs on March 10, 2011:

The CS deletes the cause of action against an unlicensed or unregistered person who violates the proposed advertising requirements.

- B. Amendments:

None.

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

¹⁵ Gov't Efficiency and Accountability Council, The Florida House of Representatives, *House of Representatives Local Bill Staff Analysis, CS/HB 781* (March 14, 2007), available at <http://www.myfloridahouse.gov/Sections/Bills/bills.aspx> (last visited 3/23/2011).

¹⁶ Dep't of Children and Family Services, *supra* note 14.

¹⁷ Special law 61-2681, L.O.F., as amended by section 1 of ch. 70-893, L.O.F.

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 Commerce and Tourism Committee

BILL: SM 852

INTRODUCER: Senator Hays and Senator Gaetz

SUBJECT: Supporting the Marketing of Florida Seafood

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Favorable
2.	McCarthy	Cooper	CM	Pre-meeting
3.			AG	
4.				
5.				
6.				

I. Summary:

This Senate Memorial urges the United States Congress to support the marketing of domestic seafood generally and Florida seafood specifically.

Specifically, the memorial urges that Congress allocate import tariffs generated from marine and fishery product imports to promote domestic and Florida seafood. It also urges that Congress dedicate funds from import tariffs to a national seafood marketing fund to promote domestic seafood products.

II. Present Situation:

Seafood Production for Florida and the United States

Fishery products are composed of both “edible” and “nonedible” products. Edible products are those fit for human consumption and are generally labeled “seafood.” Nonedible products are not, though some may be used as feed ingredients for animals. The U.S. imported 5.2 billion pounds of edible products worth \$13.1 billion in 2009. Shrimp accounts for 29 percent of the total, or \$3.8 billion.¹

Florida’s commercial production of seafood in 2009 was valued at more than \$152 million. There are approximately 13,000 licensed commercial fishermen and aquaculturists in the state.

¹ U.S. Dep’t of Commerce, NOAA Fisheries: Office of Science and Technology, *Fisheries of the United States – 2009: Foreign Trade*, available at: http://www.st.nmfs.noaa.gov/st1/fus/fus09/06_trade2009.pdf (last visited 03/24/2011).

The total economic impact from seafood harvesting activities was valued at more than \$600 million in 2009.²

Initial Deepwater Horizon Explosion

At approximately 10:00 p.m. on April 20, 2010, the Transocean drilling rig known as Deepwater Horizon exploded in the Gulf of Mexico with the loss of 11 missing and presumed dead crewmembers.³ With the resulting leakage of crude oil and natural gas from the well site, the Deepwater Horizon disaster is now considered by many to be the largest single environmental disaster in United States history.

At the time of the explosion, the Deepwater Horizon rig was moored approximately 45 miles southeast of the Louisiana coast. Drilling operations were being conducted at a sea depth of 5,000 feet and had progressed more than 18,000 feet below the sea floor where commercial oil deposits were discovered. The site, known as the Mississippi Canyon Block 252, is estimated to hold as much as 110 million barrels of product.^{4,5}

On April 22, 2010, the Deepwater Horizon rig capsized and sank. Two days later, underwater cameras detected crude oil and natural gas leaking from the surface riser pipes attached to the well-head safety device known as the blowout preventer. The blowout preventer malfunctioned and failed to shut off flow out of the well-head.

Initial estimates assessed leakage at 1,000 barrels per day. The estimate was subsequently revised to 5,000 barrels per day.⁶ Estimates about the flow rate from the broken well were a subject of controversy, with various scientists calculating different rates from the official government estimates. The actual daily rate of leakage was somewhere between 52,700 and 62,200 barrels per day. “The emerging consensus is that roughly five million barrels of oil were released by the Macondo well, with roughly 4.2 million barrels pouring into the waters of the Gulf of Mexico.”⁷ On August 4, 2010, BP reported that the “static kill” method effectively stopped the oil leak. Work on the relief well was completed on September 19, 2010, which sealed the well with a cement plug. The final incident report issued by then Governor Crist

² E-mail from Nelson Mongiovi, Director, Department of Agriculture and Consumer Services, Division of Marketing and Development, dated March 3, 2011, (on file with the Senate Committee on Environmental Preservation and Conservation).

³ Wall Street Journal, Deepwater Horizon Rig Disaster – Timeline, available at <http://online.wsj.com/article/SB10001424052748704302304575213883555525958.html> (last visited 03/24/2011).

⁴ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6: Stopping the Spill: The Five-Month Effort to Kill the Macondo Well, available at <http://www.oilspillcommission.gov/sites/default/files/documents/Updated%20Containment%20Working%20Paper.pdf> (last visited 3/26/2011).

⁵ A barrel of oil is equivalent to 42 U.S. gallons.

⁶ WSJ.com Deepwater Horizon Rig Disaster – Timeline.

⁷ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 3: The Amount and Fate of the Oil, available at <http://www.oilspillcommission.gov/sites/default/files/documents/Updated%20Amount%20and%20Fate%20of%20the%20Oil%20Working%20Paper.pdf> (last visited 3/25/2011). “By initially underestimating the amount of oil flow and then, at the end of the summer, appearing to underestimate the amount of oil remaining in the Gulf, the federal government created the impression that it was either not fully competent to handle the spill or not fully candid with the American people about the scope of the problem.”

showed that 2,000 tons (500,000 gallons) of oil had been recovered from Florida's shoreline as of August 26, 2010.⁸

Florida Response

Governor Crist declared a state of emergency on April 30, 2010, as a result of the spreading oil spill in the Gulf of Mexico and included Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf counties in the emergency declaration.⁹ The initial executive order was amended on May 3, 2010, to include Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, and Sarasota counties.¹⁰ Subsequently, Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.¹¹

Florida's emergency response system began immediate operations, which continued through the capping of the well.¹² The cost to Florida in terms of response costs, damage to Florida's economy and business community, individual workers who have lost jobs, decrease in property values, commercial fisheries and restoration of environmental damage cannot be calculated because of the ongoing nature of the effects.

As reported by the Governor's Gulf Oil Spill Economic Recovery Task Force at their monthly meeting in October 2010, state and local government institutions in Florida have been granted \$130 million in funding from BP to support environmental response and economic recovery efforts.¹³

Award	Amount
1. Response and Recovery Costs	
a. Booming/Consultant Cost	\$40,000,000
b. State Response Cost	\$10,000,000
2. Tourism	\$32,000,000
3. Natural Resource Damage Assessment	\$8,000,000
4. Employment and Training Activities	\$7,000,000
5. Research Impact on Gulf of Mexico	\$10,000,000
6. Mental Health Care	\$3,000,000
7. Fish and Shell Fish Testing and Marketing	\$20,000,000

On December 29, 2010, BP reported that it had invested nearly \$1.3 billion in Florida.¹⁴ The majority of those payments, 85 percent, were to individuals and business to offset economic losses from the oil spill.

⁸ Situation Report #114 (Final), Deepwater Horizon Response, available at http://www.dep.state.fl.us/deepwaterhorizon/files/sit_reports/0810/situation_report114_082610.pdf (last visited 03/25/2011).

⁹ Office of the Governor, Executive Order Number 10-99, dated April 30, 2010.

¹⁰ Office of the Governor, Executive Order Number 10-100, dated May 3, 2010.

¹¹ Office of the Governor, Executive Order Number 10-106, dated May 20, 2010.

¹² The operations transitioned to a monitoring status on August 27, 2010.

¹³ Governor's Gulf Oil Spill Economic Recovery Task Force, created by Executive Order No. 10-101. See the October 28, 2010 Report for detailed information on funding from BP.

¹⁴ BP Investments and Payments - Florida, Dec 29, 2010, available at <http://www.floridagulfresponse.com/go/doc/3059/979815/> (last visited on 3/25/11).

Effect of the Oil Spill on Florida's Fisheries

The spill caused the closure of 88,522 square miles of federal waters to fishing, and affected hundreds of miles of shoreline, bayous, and bays. In addition to closure of federal waters, the Florida Fish and Wildlife Conservation Commission (FWC) in conjunction with other state agencies, declared parts of Escambia County closed to harvesting of saltwater fish, crabs and shrimp.¹⁵ The closure was in effect from June 14, 2010, to July 31, 2010, for saltwater fish and to August 17, 2010, for shrimp.¹⁶ State waters were reopened to all commercially harvested species on September 15, 2010, by FWC Executive Order 10-46.¹⁷

From April until July, several efforts were made to stop the flow of oil from the broken well. Most were unsuccessful. Finally, on July 15, 2010, (87 days after the blowout) the leaking well at the Deepwater Horizon site was capped and oil discharge into the ocean was stopped (the “top kill”). On September 19, 2010, 152 days after the April 20 blowout, Admiral Thad Allen announced that the well was “effectively dead.”¹⁸

The Deepwater Horizon oil spill crippled Florida's seafood industry. Consumers across the nation were wary of eating any seafood from the Gulf of Mexico. Seafood sales plummeted immediately after the event. Many restaurants around the state began to put notices out that they were not serving seafood from the Gulf of Mexico. Staff at the Florida Department of Agriculture and Consumer Services (DACS) have documented that consumer confidence still remains unusually low. The public perception is that seafood from the Gulf of Mexico is tainted.¹⁹

Several polls have been conducted on behalf of DACS since the Deepwater Horizon incident. One highlight of the polls shows that 8 months after the first survey in May 2010, 61 percent of respondents said they were cautious and not buying as much seafood. Further, results show that Florida consumers remained “more concerned about”:

- The long term-effects on availability (42 percent);
- Price increases due to spill (54 percent);
- Safety of Gulf seafood (48 percent); and
- Potential of unforeseen risks (49 percent).²⁰

¹⁵ Press Release, Florida Fish and Wildlife Conservation Commission, *Oil forces partial fishing closure in Escambia County* (June 13, 2010) available at http://74.174.224.46/search?q=oil+forces&site=default_collection&client=default_frontend&proxystylesheet=default_frontend&output=xml_no_dtd (last visited 03/25/2011).

¹⁶ Press Release, Florida Fish and Wildlife Conservation Commission, *Closed shrimp-harvesting area in Escambia Co. reopens* (June 13, 2010) available at: http://www.myfwc.com/NEWSROOM/10/statewide/News_10_X_OilSpill39.htm (last visited 03/25/2011).

¹⁷ Florida Fish and Wildlife Conservation Commission, Order No. EO 10-46, *Reopening of State Waters of the Gulf of Mexico that were closed in response to the Deepwater Horizon Oil Spill* (Sep. 15, 2010) available at http://myfwc.com/media/310640/EO_10_46_ReopenStateWatersGulfDeepwaterHorizon.pdf (last visited 03/25/2011).

¹⁸ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.

¹⁹ See *supra* note 2.

²⁰ See *supra* note 2.

Florida's commercial fishermen continue to harvest quality seafood from the Gulf of Mexico and Atlantic Ocean, yet their sales are lagging. One of DACS' goals is to restore and improve Florida's seafood sales and the livelihoods of all involved in the state's commercial fishing industry. This can only be accomplished by assuring consumers and commercial buyers that Florida seafood products are safe, fresh, and plentiful.²¹

III. Effect of Proposed Changes:

SM 852 urges the Congress of the United States to support the marketing of Florida seafood. Specifically, the memorial urges Congress to:

- Allocate moneys generated from fishery product import tariffs for marketing Florida seafood;
- Pass legislation to create a national seafood marketing fund using fishery product import tariffs to finance the activities; and
- Urges the Florida Congressional Delegation to work with representatives of other seafood-producing states to promote domestic seafood.

Copies of the memorial are to be distributed to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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:

None.

²¹ See *supra* note 2.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

IX. None.

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 Commerce and Tourism Committee

BILL: CS/SB 1224

INTRODUCER: Committee on Military Affairs, Space, and Domestic Security and Senator Altman

SUBJECT: Corporate Tax Credits and Refunds

DATE: March 21, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	Fav/CS
2.	Pugh	Cooper	CM	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

The retirement of the Space Shuttle next year, and cancellation of its successor Constellation program, is projected to leave in its wake the loss of as many as 9,000 Florida jobs directly associated with the program. Economic development agencies are developing strategies to counter this job loss by recruiting new aerospace companies or encouraging expansion of existing companies.

CS/SB 1224 creates two corporate income tax credits, available for tax years beginning on or after October 1, 2015, for certified spaceflight businesses that meet specified job-creation and investment levels. These incentives are:

- A non-transferrable tax credit equal to 50 percent of the net corporate income tax liability in a given tax year. Total tax credits available will be capped at \$10 million per state fiscal year, with individual businesses eligible for a maximum \$1 million each year.
- A transferable corporate income tax credit based on a certified spaceflight business' net operating losses, and which can be sold to any other Florida corporate income taxpayer. Total tax credits available under this tax credit will be \$25 million per state fiscal year, with individual businesses eligible for a maximum \$2.5 million each year.

The bill directs the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to implement a process to certify spaceflight businesses for these tax credits, based on certain documentation filed with an application. Space Florida will assist OTTED in the certification process. OTTED also will notify the Department of Revenue (DOR) of the eligible taxpayers and the amount of tax credits available to them.

Finally, the bill removes the maximum amount of tax refunds a recipient of either the Qualified Defense Contractor and Spaceflight Business tax refund program or the Qualified Target Industry tax refund program may receive.

CS/SB 1224 creates s. 220.194, F.S., and substantially amends ss. 14.2015, 213.053, 220.02, 220.13, 220.16, 288.1045, and 288.106, F.S.

II. Present Situation:

*Background on the Commercial Space Launch Industry*¹

The retirement of the Space Shuttle next year, and the cancellation of its successor Constellation program, is projected to leave in its wake the loss of as many as 9,000 Florida jobs directly associated with the program. State and regional economic development and workforce training agencies are developing strategies to address the job loss, ranging from the recruitment of new companies to offering retraining in related fields. Space Florida, the state's aerospace policy and economic development entity, is working to recruit the fledgling commercial spaceflight industry, both in the U.S. and internationally, to this state. Currently, aerospace companies can utilize, depending on their location and investment, 13 state business incentives and at least four business sales-tax exemptions specified in statute.

Space transportation is the movement of, or means of moving, objects such as communications and observation satellites, to, from, or in space. In recent years, commercial launches have comprised at least 25 percent of all launches conducted worldwide. Commercial space transportation is carried out by vehicles owned and operated by private companies or organizations. The majority of such launches carry satellites and other payloads owned by private companies and procured through a competitive bidding process, although government payloads are occasionally launched commercially.

Commercial launches today are provided by expendable launch vehicles, which are used only once. But many companies and entrepreneurs are working to develop reusable launch vehicles that could be used multiple times at a cost savings.

Another growing part of the commercial space transportation industry in the United States is the development of private or state-operated launch, re-entry, and processing sites known as "spaceports." Florida, Virginia, New Mexico, and Texas are among the states developing commercial spaceports. These spaceports can provide space transportation service providers and their customers with an alternative to the traditional U.S. federal launch sites and ranges operated by either the U.S. Air Force or the National Aeronautics and Space Administration (NASA).

¹ Summarized from information posted at website of FAA's Office of Commercial Space Transportation. See: http://ast.faa.gov/about/office_org/headquarters_offices/ast/industry/.

Prior to the early 1980s, there was no commercial space transportation industry. Only the United States launched commercial satellites, and these were launched on vehicles owned by the government, including the Space Shuttle. The first commercial U.S. launch occurred on March 29, 1989, when a Starfire orbital vehicle carrying the CONSORT 1 payload of materials for anti-gravity experiments developed by the University of Alabama blasted off from the White Sands Missile Range in New Mexico.²

The commercial launch industry has grown dramatically, in part due to the development of the European commercial launch services organization Arianespace³ and the ban on commercial payloads flying aboard the Space Shuttle after the *Challenger* disaster. By 2006, U.S. commercial space transportation accounted for more than \$139 billion in total economic activity, more than double the amount in 1999.⁴

Internationally, revenues from commercial launches are increasing. Estimated revenues from the 28 commercial launches worldwide were \$1.97 billion, with \$700 million in revenues generated by European launches, \$581 million from Russian launches, \$215 million from U.S. launches, and \$475 million from other international sites.⁵ The number of commercial launches varies each year, depending on the demand for launch services and other factors.

The Office of Commercial Space Transportation within the Federal Aviation Administration (FAA) is the U.S. government organization responsible for regulating and facilitating the safe operations and international competitiveness of the U.S. commercial space transportation industry. The FAA's launch regulations and licensing procedures apply to all commercial launches taking place within U.S. territory, and for launches being conducted abroad by U.S. companies. In general, the FAA does not license launches by U.S. government organizations and certain classes of small rockets.

Florida's attempts to attract more commercial space business

According to Space Florida's research,⁶ the state is losing commercial launches to international competitors because of two factors: lower costs and greater assurance of launch dates. Some of the factors Space Florida cites that make it less expensive to launch overseas include:

- The fact that no military approval is needed;
- Lower safety standards;
- Lower labor costs; and
- Availability of missiles to launch the payloads.

Similarly, other nations offer commercial satellite companies a firm launch date, which is important to their business plans. With commercial satellites generating revenue soon after

² See <http://www.ncbi.nlm.nih.gov/pubmed/11537544>.

³ More information is available at: <http://www.arianespace.com/index/index.asp>.

⁴ *The Economic Impact of Commercial Space Transportation on the U.S. Economy*. April 2008. Available at: <http://ast.faa.gov/news/updates/media/EcoImpactReport2008.pdf>.

⁵ *Commercial Space Transportation Year in Review: 2008*. Published by the FAA. Information found on page 9. Available at http://www.faa.gov/about/office_org/headquarters_offices/ast/media/2008%20Year%20in%20Review.pdf.

⁶ Excerpt from Space Florida White Paper: *Perception vs. Reality*. On file with Space Florida.

launch, any delay in a launch date can have significant effects on a business' financial bottom line.

Space Florida's efforts to make the state more attractive to commercial launch companies include:

- Entering into an agreement with the U.S. Air Force 45th Space Wing to lease Space Launch Complex 36 (SLC-36). Space Florida plans to renovate SLC-36 into a multi-use launch facility, using \$14.5 million in state funds appropriated in FY 2008-2009.⁷
- Helping facilitate the Air Force's assignment of Space Launch Complex 40 (SLC-40) to the privately owned company SpaceX prior to its demolition. SpaceX received SLC-40 with its more than \$250 million in existing infrastructure and buildings, won bid contracts from NASA in excess of \$1.6 billion, and has received more than \$2 million in cash and in-kind support from Space Florida.
- Marketing state-owned space infrastructure, which includes LC-46; the 50,000-square-foot Reusable Launch Vehicle (RLV) hangar; and the \$30 million Space Life Sciences Lab, home to International Space Station research and associated life sciences and biological research.
- Developing plans for "Exploration Park," planned as a mixed-use, multi-tenant technology and commerce park supporting both government and commercial space activities. Space Florida recently selected a general contractor to design and build the complex in phases. It will be located near the existing Space Life Sciences Lab, and on non-restricted property within Kennedy Space Center.

These facilities are within Florida's main "spaceport" property at Kennedy Space Center and Cape Canaveral. Certain designated areas in Gulf, Okaloosa, Santa Rosa, and Walton counties also are considered "spaceport territory," pursuant to s. 331.304, F.S. Space Florida also has the authority, pursuant to s. 331.329, F.S., to annex land for spaceport purposes.

Additionally, in January 2010, Cecil Field near Jacksonville received a launch operator's license from the Federal Aviation Administration, allowing it to support horizontal space launches from its runways.⁸ Cecil Field's license makes it the nation's seventh commercial spaceport. It will allow horizontal launches of vehicles, such as Virgin Galactic's prototype SpaceShipTwo tourist space vehicle, to take off and land like planes at the site's 12,500-foot runway.

In a move to put Florida in the forefront of the embryonic "space tourist" business, the Legislature passed the Spaceflight Informed Consent Act in 2008.⁹ Mirrored after a Virginia law, this legislation provides immunity from litigation for a spaceflight entity if one of its passengers is injured or dies during a flight, so long as a required warning is given to and signed by the passenger. The immunity does not apply if the spaceflight entity commits gross negligence or

⁷ Space Florida has spent approximately \$3.7 million for improvements to SLC-36 and is seeking legislative permission to use some of the remaining \$10.8 million on other projects according to conversations with Space Florida staff. More information is available in the analysis for CS/SB 1776, 2010 legislative session, available at <http://www.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s1776.cm.pdf>.

⁸ General information about Cecil Field is available at <http://www.jaa.aero/AirSys/CF.aspx>. Spaceport information is available at many sites, including <http://www.cecilfieldspaceport.com/>. Both sites last visited March 16, 2011.

⁹ Chapter 2008-180, L.O.F. (Section 331.501, F.S.)

willful or wanton disregard for the safety of the passenger; has actual knowledge or reasonably should have known of a dangerous condition; or intentionally injures the passenger.

A 2009 report on how the 50 states are supporting commercial space activities indicated that Florida and Virginia have the most attractive incentives.¹⁰

Florida's current aerospace incentives

The state of Florida offers three aerospace-specific financial incentives, along with a number of general business incentives, of which aerospace companies can take advantage, depending on their location and investment.

The Legislature created the Qualified Defense Contractor Tax Refund¹¹ program in 1993 in response to the state's concerns that reductions in federal defense spending could result in losses of high-wage, high-technology jobs in Florida. The program has been amended several times in the intervening years, most recently in 2008, when it was extended to eligible space flight businesses participating in aerospace activities. It is now called the Qualified Defense Contract and Spaceflight Business (QDSC) Refund Program. It sunsets June 30, 2014.

QDSC's basic incentive is a tax refund based on \$3,000 per retained or created job, which pays an annual wage of at least 115 percent of the area's average annual wage and meets other conditions of the business' agreement with OTTED. The per-job tax credit increases to \$6,000 if the business is located within a rural county or an enterprise zone, with a \$1,000 per job bonus if the job pays an annual average wage at least equal to 150 percent of the area's private-sector wage and a \$2,000 per job bonus if the average annual wage is at least 200 percent of the area's average private-sector wage.

No qualified business may receive more than \$2.5 million in tax refunds in any one tax year, or \$5 million total.

This tax incentive targets the following types of projects: consolidation of certain Department of Defense (DoD) contracts; conversion of DoD production jobs to non-defense production jobs; and projects involving the reuse of defense-related facilities for specific activities; the manufacturing, processing, and assembly of space flight vehicles; and a number of other activities related to space flight.

A qualified defense contract or spaceflight business may claim refunds from one or more of the following taxes paid:

- Sales and use taxes;
- Documentary stamp taxes;
- Emergency excise taxes;
- Ad valorem taxes;
- Corporate income taxes;

¹⁰ State Support for Commercial Space Activities. Published by the FAA in 2009. Available at http://www.faa.gov/about/office_org/headquarters_offices/ast/media/State%20Support%20for%20Commercial%20Space%20Activities.pdf. Last visited March 16, 2011.

¹¹ Section 288.1045, F.S.

- Insurance premium taxes;
- Intangible personal property taxes; and
- Certain state communications taxes under ch. 202, F.S.

Since its inception, 44 QDSC applications have been received, and 30 have been approved. There are five active QDSC projects, which have committed to create or retain 1,504 jobs over the years with a committed average wage of nearly \$53,780. These five companies have received a total of \$5.9 million in tax refunds.¹²

According to the 2010 state incentives report prepared by Enterprise Florida, Inc., three new QDSC applications were received in fiscal year 2010. Two applications were under review at Enterprise Florida at the end of the fiscal year and one was approved in early FY 2011. No QDSC applications were approved in FY 2010.

The Qualified Target Industry (QTI) Incentive Tax Refund Program¹³ was created by the Legislature in 1994 as part of a retooling of Florida's economic development efforts. The QTI program was designed to encourage the recruitment or creation of higher-paying, higher-skilled jobs for Floridians, by awarding eligible businesses refunds of certain state or local taxes paid in exchange for creating jobs. The amount of refund is based on the wages paid, number of jobs created, and where in the state the eligible business chooses to locate or expand.

The target industry list includes a wide range of businesses that meet specific criteria and fall within the following industry categories: manufacturing facilities; finance and insurance services; wholesale trade; information industries; professional, scientific and technical services; management services; and administrative and support services. Businesses with space-related operations have the opportunity to meet the criteria for several of these categories.

The QTI program offers a tax refund of \$3,000 per created job, which pays an annual wage of at least 115 percent of the area's average annual wage and meets other conditions of the business' agreement with OTTED. The per-job tax credit increases to \$6,000 if the business is located within a rural county or an enterprise zone. Under this program, businesses are eligible for a number of bonus incentives if they meet certain criteria. For example, a business can receive a \$1,000 per job bonus if the job pays an annual average wage at least equal to 150 percent of the area's private-sector wage and a \$2,000 per job bonus if the average annual wage is at least 200 percent of the area's average private-sector wage.

A qualified target industry business may not receive more than \$1.5 million in refunds in a single fiscal year, or more than \$2.5 million if the project is located in an enterprise zone. Additionally, a qualified target industry business may not receive more than \$5 million in refund payments in all fiscal years, or more than \$7.5 million if the project is located in an enterprise zone. Taxes eligible for refund are the same as for the QDSC program, listed above.

¹² 2010 Incentives Report, prepared by EFI. Information on page 19. Available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf. Site last visited March 18, 2011.

¹³ Section 288.106, F.S.

As of June 30, 2010,¹⁴ 959 business projects have been recommended for the QTI incentive; 926 have been approved by the former Department of Commerce or OTTED; and 791 have entered into QTI agreements with the state. Of those 791 projects, 243 remain “active,” meaning they are eligible to receive tax refunds through the QTI program. These 243 projects have committed to create 38,412 jobs, paying an average wage of \$45,772. QTI is set to expire on June 30, 2020.

The other space-centric incentives are two related sales-tax exemptions:

- One is for machinery and equipment used in aerospace, defense, and semiconductor facilities, in s. 212.08(5)(j), F.S. Eligible machinery and equipment must be used to design, manufacture, assemble, process, compound, or produce technology products for sale. Such products, for aerospace, include space launch or space flight vehicles, missiles, satellites, payloads, avionics and control systems. In FY 2011-2012, this exemption is expected to have an estimated negative impact on state general revenue of \$2 million;¹⁵ there is no breakout specific to space-related manufacturers.
- The second incentive is found in s. 212.08(5)(b)1. and 2., F.S., and is for machinery and equipment used in spaceport activities, defined as activities directed or sponsored by Space Florida on spaceport property, or by new businesses anywhere in the state that manufacture tangible personal property. This refund is approved by DOR. In FY 2011-2012, this exemption is expected to have an estimated negative impact on state revenue of \$13.1 million.¹⁶ There is no available breakout specifying that portion of the total credits claimed attributable to aerospace activities on spaceport property.

As mentioned above, aerospace or spaceflight businesses also could be eligible, based on their location, job creation, and investment, for the following general business incentives:

- Brownfield Redevelopment Bonus Refund Program;
- Capital Investment Tax Credit;
- Contaminated Site Rehabilitation Tax Credit;
- High Impact Performance Incentive Grant; Incumbent Worker Training Program;
- Innovation Incentive Program;
- Quick Action Closing Fund;
- Quick Response Training Program;
- Rural Job Tax Credit Program;
- Economic Development Transportation Fund, or the “road fund;” and
- Urban High-Crime Area Job Tax Credit Program.

Space workforce and economic impact issues

The Brevard Workforce Development Board, Inc., (BWDB) estimates that Space Shuttle-related activity in Florida supports a workforce level of approximately 9,000 employees (6,340 United Space Alliance employees and 2,895 sub-tier and related support contractor employees). The majority of this workforce is located at or near the Kennedy Space Center. However, the total

¹⁴ 2010 Incentives Report, prepared by EFI. Information on page 15. Available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf. Site last visited March 18, 2011.

¹⁵ 2011 Florida Tax Handbook. Page 157. Available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2011.pdf>. Last visited March 20, 2011.

¹⁶ Ibid.

economic impact of the space shuttle program is statewide, and there is a specific shuttle-related supplier base of some 1,046 companies throughout the state.

The most recent information compiled by the BWDB¹⁷ indicates that most of the 9,000 Space Shuttle employees will likely be impacted by shuttle's retirement and the cancellation of the shuttle's successor, Constellation.

NASA's operations in Florida are a major economic driver.¹⁸ The total amount of NASA spending (so-called "outside money") for KSC-related activities was \$1.96 billion, including \$1.1 billion in wages in FY 2007-2008. Counting indirect spending, the total economic impact of NASA to Florida was estimated at \$4.1 billion in production output, \$2.1 billion in household income, 40,802 jobs, and \$103 million in state and local tax revenues. The study also found that 98 percent of the output impact and 99 percent of the jobs and wage impacts occur in the seven-county Central Florida region¹⁹ around KSC.

III. Effect of Proposed Changes:

CS/SB 1224 creates two corporate income tax credits intended to attract spaceflight businesses to Florida or to encourage Florida companies performing similar work to expand or diversify into aerospace-related goods and services. It also creates an application and certification process to determine businesses' eligibility for the credits, and mechanisms for OTTED and DOR to enforce compliance. Finally, the bill requires an annual report to the Governor and the Legislature on the new program's activities.

Section 1 amends s. 14.2015, F.S., to add the administration of the spaceflight business tax credit program to OTTED's responsibilities.

Section 2 amends s. 213.053, F.S., to allow DOR to be able to share confidential tax data about certified spaceflight businesses to OTTED or Space Florida.

Section 3 amends s. 220.02, F.S., to add the spaceflight business tax credits last in the list of credits that may be taken against Florida corporate income tax liability.

Section 4 amends s. 220.13, F.S., to account for the tax credits as an adjustment to taxpayer's reported income.

Section 5 amends s. 220.16, F.S., to adjust a taxpayer's non-business income to include payments received for selling tax credits pursuant to s. 220.194(3)(b), F.S.

Section 6 creates s. 220.194, F.S., establishing two tax credits, definitions for terms used in the bill, the credit approval and certification process for spaceflight businesses and the tax credit administration and enforcement process.

¹⁷ On file with the Senate Commerce Committee.

¹⁸ Information in the paragraph was obtained from the report, "Economic Impact of NASA in Florida, FY 2008." Available at http://www.nasa.gov/centers/kennedy/pdf/318131main_economic-impact08.pdf. Last visited March 16, 2011.

¹⁹ The report lists those seven counties as Brevard, Flagler, Lake, Orange, Osceola, Seminole, and Volusia.

Definitions

Key definitions include:

- “Spaceflight business” is defined as a business that:
 - Is registered with the Secretary of State to do business in Florida; and
 - Is currently engaged in a spaceflight project.
- “Spaceflight project” means any of the following activities performed in Florida:
 - Designing, manufacturing, testing, or assembling a space vehicle or components thereof;
 - Providing a launch service, payload processing service, or reentry service; or
 - Providing the payload for a launch vehicle or reentry space vehicle, administrative support, and tourism activities related to these activities.

A spaceflight business may participate in more than one spaceflight project at a time.

- “New employee” means a Florida resident who begins or maintains full-time employment in Florida with a spaceflight business on or after October 1, 2011. The term does not include a person who is a partner, majority stockholder, or owner of the business or a person who is employed in a temporary construction job or principally involved with the construction of real property.
- “New job” means the full-time employment of an employee in a manner that is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation. To meet the requirement for certification specified in subsection (5)(b) of the bill, a new job must:
 - Pay new employees at least 115 percent of the statewide or countywide average annual private-sector wage for the 3 taxable years immediately preceding filing an application for certification;
 - Require a new employee to perform duties on a regular full-time basis in this state for an average of at least 36 hours per week each month for the 3 taxable years immediately preceding filing an application for certification; and
 - Not be held by a person who has previously been included as a new employee on an application for any credit authorized by this section.

Application to enter the program and earn credits

For the purposes of applying for and eventually claiming either of the tax incentives created in this act, a spaceflight business must first file an application with OTTED requesting approval to earn credits. This initial application may occur as soon as CS/SB 1224 becomes law. A business can file only one such application per year. The application must include the following information: a complete description of the proposed project, number of current employees, and the amount and type of credits for which the business is seeking. OTTED may consult with Space Florida about the applicant’s qualifications.

OTTED has 60 days from receipt of a completed application to issue a notice of intent to allocate the amount of credits that may be earned by the applying spaceflight business. Approval of credits is on a first-come, first-served basis.

Application process to claim credits

At least 3 years later, in 2015, the business must file another application with OTTED to be certified to actually claim the credits it was initially allocated. To be certified, the business must pay a \$250 application fee and document that it has:

- Created, filled and retained at least 35 new jobs in Florida for Florida residents directly associated with an individual spaceflight project within the 3 years prior to claiming a credit. The minimum 35 new jobs must be in addition to the jobs listed on the business' eligibility application to OTTED.
- Invested a total of at least \$15 million in an individual spaceflight project in Florida during the 3 years prior to claiming the credit.

The application also must include: certain information about the business; the total amount and types of credits sought; whether it intends to transfer the credits based on its net operating loss; a copy of an audit prepared by a Florida-licensed certified public accountant that identifies the portion of the business's activities related to spaceflight activities in Florida; and any other documentation deemed necessary by OTTED.

OTTED will review and evaluate each tax credit claim application based on the aforementioned documentation, and forward its recommendation to OTTED's executive director, who must approve or deny the claim application within 30 days, and notify DOR within 10 days about the approvals. OTTED also must provide a letter of certification to the successful applicant, and inform an unsuccessful applicant of the reasons for denial.

Tax Credits

The corporate income tax credits created in CS/SB 1224 are available to be approved upon application and thereafter taken by a certified business for taxable years beginning on or after January 1 of the calendar year preceding the start of the applicable state fiscal year, commencing October 1, 2015. The tax credits are:

- A non-transferrable corporate income tax credit equal to 50 percent of a spaceflight business's corporate income tax liability. The per-business cap is \$1 million, and OTTED may not approve more than \$10 million of these credits during a single state fiscal year.
- A transferable corporate income tax credit based on a spaceflight business's net operating losses.²⁰ The amount of this transferrable tax credit is 100 percent of the certified spaceflight business' net operating losses that would otherwise be available to be taken on a Florida return. This credit may be transferred in exchange for monetary compensation to one or more other ch. 220, F.S., taxpayers. This tax credit is capped at \$2.5 million per business per tax, and OTTED may not approve more than \$25 million of these credits during a single state fiscal year.

A certified spaceflight business may claim only one of these tax credits per year and may only claim each credit once. Under no circumstance will a certified spaceflight business be allowed to claim a tax credit in excess of its tax liability.

²⁰ For this second tax credit, the spaceflight business must meet two additional criteria: it must have incurred operating losses and it must not be at least 50-percent owned or controlled by another company, or a consolidated group of affiliated corporations, that have shown positive net income in any of the 3 previous calendar years through ongoing operations.

Also, a certified spaceflight business cannot claim these tax credits if it decides to file a consolidated tax return. This prevents a parent or affiliated company with a larger corporate income tax liability from taking advantage of the spaceflight business's tax credit.

Process to transfer credits

A certified spaceflight business is allowed to transfer all or part of approved credits to a Florida corporation by a written agreement. Any ownership interest in the project or its infrastructure is not transferred along with the tax credit.

The transferring spaceflight business must provide DOR with a written document, approved by OTTED, that:

- Identifies the transferee's name, address, and federal taxpayer identification number;
- States the date that the transfer is effective;
- Identifies the tax period in which the transferred credits will be claimed; and
- The amount of tax credits to be transferred.

Upon receipt of the approved transfer statement, DOR shall provide the transferee and OTTED with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply the credits.

DOR responsibilities

Also created in this section are a number of technical provisions related to DOR's ability to audit the certified spaceflight businesses; the procedures for revocation and recapture of tax credits; requirements for filing amended tax returns where warranted; and DOR's ability to assess additional taxes, penalties, and interest against taxpayers filing inaccurate or fraudulent tax returns.

Rulemaking and reporting requirements

OTTED, in consultation with Space Florida, is directed to adopt rules related to its administration of this program, including the application forms and the application and certification process. DOR is directed to adopt rules related to necessary forms, reporting requirements, transfer of credit requirements, and what constitutes the minimum portion of a credit that can be transferred.

All certified spaceflight businesses must file an annual report with OTTED about the progress of its project(s). OTTED, in cooperation with Space Florida and DOR, must submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, beginning November 30, 2014, about the activities of the spaceflight business incentives program.

Section 7 amends s. 288.1045, F.S., to delete a provision which restricts a qualified applicant from receiving more than \$5 million in tax refunds in all fiscal years it participates in the QDSC Tax Refund Program.

Section 8 amends s. 288.106, F.S., to delete a provision which restricts a qualified target industry business from receiving more than \$5 million in refund payments in all fiscal years it participates in the QTI program, or more than \$7.5 million if the project is located in an enterprise zone.

Section 9 provides that this act will take effect upon becoming law, except that the credits created by the legislation may not be claimed prior to October 1, 2015.

Other Potential Implications:

QTI and QDSC are designed to give new or expanding businesses in targeted industry sectors an initial boost to their hiring as they become established within the marketplace. Removing the lifetime cap on the amount of QTI and QDSC refunds a qualified business can receive from the State Treasury could have the effect of the same companies either staying in the programs longer than the 4 years that is the typical term of their agreements with OTTED, or returning to the program multiple times for future expansions or changes to their business plans. Because of the annual statutory funding cap of \$35 million, this could reduce the access of other, newer businesses that meet the same criteria into these programs.

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:

The Revenue Estimating Conference (REC) reviewed the bill as filed and on March 11, 2011, adopted annualized negative impacts of \$10 million for the non-transferable credit and \$25 million for the transferable credit. The REC determined that the cash impact would be zero for FYs 2011-2012 through 2013-2014.

B. Private Sector Impact:

Indeterminate, but positive. The tax credits in CS/SB 1224 may be attractive to spaceflight businesses interested in relocating to Florida or in expanding their existing facilities or markets.

C. Government Sector Impact:

Indeterminate. CS/SB 1224 increases the workload of OTTED and DOR, so it is possible these agencies may require additional FTEs and updated software.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 Affairs, Space, and Domestic Security on March 17, 2011:

- Deletes the provisions in ss. 288.1045 and 288.106, F.S., which institute limits on the amount of refunds a qualified business can receive for all fiscal years for the QDSC and QTI tax refund programs.
- Changes the date for the first tax period in which a tax credit may be claimed to correspond with the effective date of the bill.

B. Amendments:

None.



181848

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment

Delete lines 50 - 57
and insert:

6. Positive economic impact ~~Economic benefits~~.—The industry is expected to have strong positive impacts on or benefits to the state or regional economies. Special consideration should be given to industries that facilitate the development of Florida as a hub for domestic and global trade and logistics, because such activities generate economic opportunities for multiple target industry sectors.



264882

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 83 and 84
insert:

(4) APPLICATION AND APPROVAL PROCESS.—

(b) To qualify for review by the office, the application of a target industry business must, at a minimum, establish the following to the satisfaction of the office:

1.a. The jobs proposed to be created under the application, pursuant to subparagraph (a)4., must pay an estimated annual average wage equaling at least 115 percent of the average private sector wage in the area where the business is to be



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located or the statewide private sector average wage. The governing board of the county or municipality where the qualified target industry business is to be located shall notify the office and Enterprise Florida, Inc., which calculation of the average private sector wage in the area must be used as the basis for the business's wage commitment. In determining the average annual wage, the office shall include only new proposed jobs, and wages for existing jobs shall be excluded from this calculation.

b. The office may waive the average wage requirement at the request of the local governing body recommending the project and Enterprise Florida, Inc. The office may waive the wage requirement for a project located in a brownfield area designated under s. 376.80, in a rural city, in a rural community, in an enterprise zone, or for a manufacturing project at any location in the state if the jobs proposed to be created pay an estimated annual average wage equaling at least 100 percent of the average private sector wage in the area where the business is to be located, only if the merits of the individual project or the specific circumstances in the community in relationship to the project warrant such action. If the local governing body and Enterprise Florida, Inc., make such a recommendation, it must be transmitted in writing, and the specific justification for the waiver recommendation must be explained. If the office elects to waive the wage requirement, the waiver must be stated in writing, and the reasons for granting the waiver must be explained.

2. The target industry business's project must result in the creation of at least 10 jobs at the project and, in the case



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of an expansion of an existing business, must result in a net increase in employment of at least 10 percent at the business. At the request of the local governing body recommending the project and Enterprise Florida, Inc., the office may waive this requirement for a business in a rural community or enterprise zone if the merits of the individual project or the specific circumstances in the community in relationship to the project warrant such action. If the local governing body and Enterprise Florida, Inc., make such a request, the request must be transmitted in writing, and the specific justification for the request must be explained. If the office elects to grant the request, the grant must be stated in writing, and the reason for granting the request must be explained.

3. The business activity or product for the applicant's project must be within an industry identified by the office as a target industry business that contributes to the economic growth of the state and the area in which the business is located, that produces a higher standard of living for residents of this state in the new global economy, or that can be shown to make an equivalent contribution to the area's and state's economic progress.

==== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 11 - 12

and insert:

Section 1. Paragraph (t) of subsection (2) and paragraph (b) of subsection (4) of section 288.106, Florida Statutes, are amended to read:



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71
72 ===== T I T L E A M E N D M E N T =====
73 And the title is amended as follows:
74 Delete line 7
75 and insert:
76 providing for notification by a municipal governing
77 board of private-sector wage calculation; providing an
78 effective date.

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 Commerce and Tourism Committee

BILL: SB 1318

INTRODUCER: Senator Benacquisto

SUBJECT: Tax Refund for Qualified Target Industry Businesses

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

One of the Florida's most popular economic development incentives is the Qualified Target Industry (QTI) Tax Refund Program. By law, QTI provides several criteria for the Governor's Office of Tourism, Trade, and Economic Development (OTTED) and Enterprise Florida, Inc., (EFI) to review when establishing the list of target industries for the incentive.

SB 1318 revises the criteria by adding a seventh attribute – enhancing trade opportunities and global logistics – which is one of the additions to the 2011 Target Industry Sector List.

SB 1318 substantially amends s. 288.106, F.S.

II. Present Situation:

The Qualified Target Industry (QTI) Tax Refund Program¹

Overview

The QTI program was created by the Florida Legislature in 1994 to attract businesses in “targeted” industry sectors that offer high-wage jobs, high-skilled jobs to relocate in Florida. This incentive provides annual refunds of seven state taxes and local-government ad valorem taxes to businesses that meet job-creation and wage requirements for the new employees, per an agreement with OTTED.

¹ Much of the background information on QTI in this section was taken from “Interim Report 2010-211: Sunset Review of the Qualified Target Industry Tax Refund Incentive Program, Section 288.106, F.S.” The report is available at: http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-211cm.pdf

Businesses that locate or expand in Florida are eligible for tax refunds of \$3,000 per new job created. The tax refund increases to \$6,000 per job for businesses that locate in an enterprise zone or rural county. In addition, a business is eligible for per-job bonuses if certain criteria are met.

A business' application must be reviewed and certified pursuant to the standard 52-day timeline outlined in s. 288.061, F.S., which includes initial review by Enterprise Florida, Inc., and recommendations to OTTED. The executive director of OTTED makes the final decision to award the QTI incentive to a business.

The QTI program is considered by EFI to be the most popular of the state's incentives. According to EFI's 2101 incentives report, of the 110 businesses that applied for the incentive last fiscal year, 78 were approved by OTTED and 63 have entered into agreements with OTTED.²

There are 69 active QTI projects. According to the incentives report, the owners of these projects have invested \$778 million in Florida, and created 7,427 jobs paying an annual average wage of \$46,345.³ The average statewide private-sector annual wage in 2010 was \$39,621, according to data compiled by the Florida Agency for Workforce Innovation.⁴

Key definition

A "target industry business" is defined as either a corporate headquarters or any business that is engaged in one of the target industries identified by OTTED and EFI as meeting all of the statutory criteria in s. 288.106(2)(t), F.S. Those criteria are:

- **Future Growth.**— Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to businesses that export goods to, or provide services in, international markets and businesses that replace domestic and international imports of goods or services.
- **Stability.**—The industry should be stable, not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather, and relatively resistant to recession, so that the demand for its products or services is not necessarily subject to decline during an economic downturn.
- **High Wage.**—The industry should pay relatively high wages compared to statewide or area salary averages.
- **Market and Resource Independent.**—The industry should be both market and resource independent. In other words, the business should not be reliant on Florida consumers to purchase its products or services in order to be profitable, nor should it rely on Florida resources.
- **Industrial Base Diversification and Strengthening.**—The industry should contribute toward diversifying, strengthening, or expanding the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional

² Available at http://eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf Page 13. Site last visited March 24, 2011.

³ Ibid.

⁴ On file with the Senate Commerce and Tourism Committee.

- trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products, building regional industrial clusters, or developing strong industrial clusters that include defense and homeland security businesses.
- Economic Benefits.— The industry should have strong positive impacts on or benefits to the state and regional economies.

The “target industry list” actually is a list of six industry sectors, with several business types listed under each. It is published in EFI’s annual Incentives Report and is attached to OTTED’s annual legislative budget request.⁵ Originally, the list of target industries was approved by the Legislature, but since 1996 the list has been developed by OTTED, in consultation with EFI and other stakeholders. The Legislature in 2010 required that the list be reviewed, and if appropriate, revised every third year.

Based on that legislatively required review, the list was modified. The 2011 targeted industry list was approved by OTTED in January and includes the seven newly renamed categories of:

- Clean Tech;
- Life Sciences;
- Information Technology;
- Aviation/Aerospace;
- Homeland Security/Defense;
- Financial/Professional Services; and
- Emerging Technologies.

Corporate headquarters, manufacturing, and research and development activities are underneath each category.⁶ Included in the “Emerging Technologies” column are: global logistics, marine sciences, materials science, and nanotechnology.

Specifically excluded by statute as “target” industries are: any business engaged in retail activities; any electrical utility company; any phosphate or other solid-minerals severance, mining, or processing operation; any oil or gas exploration or production operation; or any business subject to regulation by the state Division of Hotels and Restaurants. Implicitly excluded is agriculture.

Also, call centers and other customer-support businesses⁷ may be considered a target industry business only after EFI and the local governing board in the community where the business plans to locate determines that the community is suffering from high unemployment, low per-capita income, or other detrimental job-related problems.

⁵ 2010 Incentives Report, prepared by EFI. Information on page 57. Available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf. Site last visited March 18, 2011.

⁶ On file with the Senate Commerce and Tourism Committee.

⁷ Identified by NAICS codes 5611 and 5614. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The U.S. Office of Management and Budget devised the system.

Other Eligibility Criteria

Meeting the definition of “target industry business” is just the first step for a business interested in applying for a QTI incentive. The business also must:

- Agree to create at least 10 new jobs or, if a Florida business planning to expand its operations, agree to create a net increase in employment of at least 10 percent. OTTED may grant a waiver to the minimum 10-percent increase in new jobs by an existing business within an enterprise zone or a rural county.
- Agree to pay each new employee an annual salary that is at least 115 percent of the average private sector wage in the area. OTTED may waive the wage requirement for businesses that locate in a rural county or city, in an enterprise zone, or in a brownfield area, if requested and justified in writing by the local governmental entity and EFI. A manufacturing project at any location in the state may qualify for the waiver if the jobs proposed to be created pay an estimated annual average wage equaling at least 100 percent of the average private sector wage in the area where the business is to be located.
- Receive a commitment of a 20-percent match (cash or in-kind) from the local government where the business proposes to locate or expand. The form of the commitment must be a resolution passed by the county commission. The local match can include the amount of ad valorem tax abatement or the appraised market value of publicly owned land or structures deeded to or leased by the QTI business. If a local government provides less than its 20-percent match, OTTED reduces the state award by the same amount.

Refunds

As mentioned previously, the basic refund is \$3,000 per new job created, to be paid out over the term of the business’ agreement with OTTED. Eligible businesses can receive double the amount of refunds for new jobs created if they are located in rural counties or in enterprise zones.

Also, bonuses of \$1,000 to \$2,000 per new job created are available, based on the following criteria:

- A \$1,000 per-job bonus if the annual average wage is 150 percent of the statewide or area average annual private-sector wage;
- A \$1,000 per-job bonus if the local match is equal to the state’s incentive award;
- A \$2,000 per-job bonus if the annual average wage is 200 percent of the statewide or area average annual private-sector wage;
- A \$2,000 per new job bonus for businesses that increase by 10 percent the tonnage or value of their exports through a Florida airport or publicly owned seaport; and
- A \$2,000 per new job bonus if the business is in one of the “high-impact industry sectors” of clean energy, corporate headquarters, financial services, biomedical technology, information technology, and transportation equipment manufacturing.

No business may receive more than \$1.5 million in QTI refunds in a single fiscal year, or more than \$5 million total over the term of its agreement with OTTED. The exception is for QTI businesses located in an enterprise zone, where the annual cap is \$2 million and the overall cap is \$7.5 million. Also, no business may receive more than 25 percent of the total award in a single fiscal year; consequently, QTI contracts between OTTED and a business typically are for a term of 4 years.

Also, no business may receive more in refunds than taxes paid.

Taxes eligible for refund under the QTI program are the:

- Corporate income taxes under ch. 220, F.S.;
- Insurance premium tax under s. 624.509, F.S.;
- Taxes on the sales, use, and other transactions under ch. 212, F.S.;
- Intangible personal property taxes under ch. 199, F.S.;
- Emergency excise taxes under ch. 221, F.S.;
- Excise taxes on documents under ch. 201, F.S.;
- Ad valorem taxes paid, as defined in s. 220.03(1), F.S.; and
- Certain state communications services taxes administered under ch. 202, F.S.

In s. 288.095(3)(a), F.S., the amount of annual state funding for the QTI and Qualified Defense Contract and Space Business (commonly referred to as QDSC) tax refunds is capped at \$35 million. Historically, the majority of the funds are paid out as QTI tax refunds because QTI is the more popular of the two incentive programs. In FY 2010-2011, the Legislature appropriated a lump sum of \$16.57 million for the QTI and QDSC tax refund incentive programs.

Global Logistics

Businesses that specialize in global logistics manage the flow of goods and services in the international market. Global logistics begins from the point a product leaves its manufacturer business to its transport within or out of the country, which means the domestic logistics infrastructure also must be efficient. A managed supply chain includes the following: inventory management, coordination of resources, and the transportation, warehousing, and packaging of manufactured goods.

In December 2010, the Florida Chamber Foundation published the Florida Trade and Logistics Report.⁸ Among the report's findings:

- In Florida, trucking is the primary method of moving goods, providing transport for more than 73 percent of all tonnage. Movement over water accounts for approximately 15 percent of all freight flows, followed by rail at 12 percent. Air accounts for less than 1 percent by volume, but holds a significant share of high-value goods.
- Domestic and international trade flows to, from, and within Florida were estimated at 623 million tons, or 33 tons per Floridian.
- Of that total, more than half originated and terminated in Florida. About 188 million tons were imports from other nations or states, and the remaining 107 million tons were exports produced in Florida and transported to other nations or states.
- Trade, logistics, and distribution industries employed 570,000 Floridians in 2008, with an average wage nearly 30 percent higher than the average for all industries in the state. Including spinoff jobs in related industries, trade and logistics industries support about 1.7 million jobs in Florida, nearly 22 percent of employment in the state.

⁸ Florida Trade and Logistics Study, page 17. Available at: https://www.communicationsmgr.com/projects/1378/docs/FloridaTradeandLogisticsStudy_December2010.pdf. Last visited March 6, 2011.

The report made a number of recommendations on how Florida should take advantage of the continuing globalization of the economy, with particular emphasis on attracting a share of the increased waterborne trade when the widened Panama Canal opens in 2014:

- Capture a larger share of the containerized imports originating in Asia and serving Florida businesses and consumers, about half of which enter the nation through seaports in other states today;
- Expand export markets for Florida businesses by filling these import containers with Florida goods and using more efficient logistics patterns to attract advanced manufacturing and other export related industries to Florida;
- Emerge as a global hub for trade and investment, leveraging its location on north-south and east-west trade lanes to become a critical point for processing, assembly, and shipping of goods to markets throughout the eastern United States, Canada, the Caribbean, and Latin America;
- Provide sufficient and reliable funding for transportation infrastructure projects; and
- Designate global trade and logistics as a statewide targeted industry.

Also, one of EFI's strategic priorities from its 2010-2015 Road Map⁹ to Florida's Future/Strategic Plan for Economic Development is for the state to improve its transportation systems for global and domestic commerce. The report makes two recommendations related to this effort:

- Maintain and expand Florida's leadership in international trade; and
- Enhance the competitiveness of Florida's infrastructure for international commerce.

III. Effect of Proposed Changes:

SB 1318 adds a seventh criterion to the definition of "target industry business" for the purposes of eligibility for the QTI tax refund incentive program, based on trade and logistics.

Section 1: Amends s. 288.106, F.S., to add to the statutory criteria for the definition of "target industry business" the following language:

7. Enhance Trade.—The industry should facilitate the growth and development of domestic and international trade and logistics. Special consideration should be given to industries that strengthen the state's positions as a global trade and logistics hub.

Section 2: Provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁹ Available at <http://eflorida.com/IntelligenceCenter/Reports/flip/roadmap/index.html>.

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:

Indeterminate.

VI. Technical Deficiencies:

The current s. 288.106(1)(t), F.S., lists six criteria, or attributes, of a target industry sector. Adding “Enhance Trade” as a separate, seventh criterion could be interpreted to mean a target industry sector has to be engaged in a business directly involved in trade or logistics – which would preclude even currently designated QTI-qualified industry sectors from participating in the QTI incentive program in the future.

A suggested solution is to modify one of the existing criteria, such as “Economic Benefits,” to include enhanced trade and logistics as an activity of special consideration for the QTI incentive.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.



298460

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 863 - 870
and insert:
By January 1 of every third year, beginning

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

And the title is amended as follows:

Delete lines 65 - 67
and insert:

Enter Amending Text Here



421216

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Montford) recommended the following:

Senate Amendment

Delete line 1078
and insert:
program, appropriate renewable - or clean-energy related
economic development incentive programs, or for



265866

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Montford) recommended the following:

Senate Amendment

Delete lines 1110 - 1111
and insert:

(7) Beginning July 1, 2012, the total amount of state credits, state refunds, and state exemptions that may be claimed by eligible businesses or transferees for energy economic

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 Commerce and Tourism Committee

BILL: SB 1460

INTRODUCER: Senator Bennett

SUBJECT: Energy Economic Zones

DATE: March 23, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.			CU	
3.			CA	
4.			BC	
5.				
6.				

I. Summary:

The Legislature, in 2009, directed the Department of Community Affairs (DCA) to implement a 2-year Energy Economic Zone (EEZ) Pilot Program to develop a model of sustainable, energy-efficient, land-use development that could be replicated by other Florida communities. The legislation did not name the initial participants in the pilot program; DCA later selected the City of Miami Beach and two isolated locations within Sarasota County. A final report on the pilot program recommended a number of changes to comprehensive planning statutes and creation or expansion of economic development incentives for businesses and property owners within the two communities.

SB 1460 makes businesses within EEZs eligible for four sales tax exemptions and seven state tax refund or tax credit incentives. The total amount of these state incentives that can be claimed annually by eligible businesses is limited to \$300,000 per EEZ community, for a total of \$600,000.

SB1460 also adds EEZ communities to the list of counties and cities eligible for an alternative state review process of comprehensive planning activities.

The bill substantially amends ss. 163.32465, 212.08, 212.096, 220.181, 220.182, 220.183, 288.047, 288.063, 288.106, 445.003, and 377.809, F.S., and corrects a cross-reference in s. 220.191, F.S.

II. Present Situation:

EEZ Pilot Program

In 2009, the Legislature passed legislation¹ that included creation of the Energy Economic Zone Pilot Program to select at least one local governmental entity interested in developing and implementing strategies for energy-efficient land-use patterns, reduce greenhouse gas emissions, cultivate green economic development, encourage the generation of renewable electric energy, and promote manufacturing to create “green” products and jobs.²

DCA was designated the lead agency, but was directed to collaborate with the Department of Transportation, the Governor’s Office of Tourism, Trade, and Economic Development (OTTED), and the Florida Energy and Climate Commission in implementing the pilot program.

Applicants were required to submit to DCA the following information:

- Identification of the proposed “energy economic zone” (EEZ);
- A proposed strategic plan for development and redevelopment in the EEZ;
- An explanation of how the strategic plan would be consistent with the existing local comprehensive plan or include proposed plan amendments necessary to achieve consistency; and
- A list of the necessary comprehensive plan amendments.

The legislation specified that the strategic plan must integrate mixed-used and transportation facilities with the local government’s land-use and development patterns to:

- Reduce reliance on automobiles as a form of transportation;
- Encourage certified green building developments and renewable energy systems;
- Encourage the creation of green jobs; and
- Demonstrate how local financial and regulatory incentives would be used in the EEZ.

DCA selected the City of Miami Beach and Sarasota County, which offered two sites, to participate in the 2-year pilot project. The two local-governmental entities submitted to DCA their initial strategy plans in February 2010, and continued to work with DCA and OTTED to develop their individual plans. The Legislature, during its 2010 session, passed a bill directed DCA and OTTED to develop recommendations on which economic development incentives and statutory revisions were necessary to accomplish the pilot program’s goals.³ DCA and OTTED were directed to work with the communities and with clean technology companies on ideas and to consider, when developing their recommendations, the following:

- Fiscal and regulatory incentives;
- A jobs tax credit and corporate property tax credit pursuant to ch. 220, F.S.; and
- Refunds and exemptions from the sales and use tax in ch. 212, F.S., for job creation, building materials, business property, and products used for clean technology industries and investments within the designated EEZs.

¹ Chapter 2009-89, L.O.F. Section 7 includes the provisions for the EEZ pilot program.

² Ibid. Section 7 includes the provisions for the EEZ pilot program.

³ Chapter 2010-139, L.O.F. Section 15 includes the directives to DCA and OTTED.

In February 2011, DCA issued a final report⁴ that recommended making businesses and property owners within the two EEZs eligible for the same tax credit and tax refund incentives available in the state's 59 enterprise zones, which are distressed communities with pockets of high jobless and poverty rates.⁵

The final report also recommended:

- Amending s. 163.32465(2), F.S., to include areas within EEZs in the Alternate State Review Pilot Program for expedited comprehensive plan amendment review.
- Amending s. 163.3164(34), F.S., to provide that areas within EEZs have the same planning flexibility pertaining to transportation concurrency and exemptions from DRI regulations;
- Modifying Part II of ch. 163, F.S., to encourage and reward buildings and developments that are Leadership in Energy and Environmental Design (LEED)⁶ certified and use Low Impact Development Standards.
- Amending s. 163.3187, F.S., to allow comprehensive planning amendments for EEZs to be processed outside of the typical twice-yearly comp plan amendment cycle.
- Including EEZ transportation projects for funding consideration from the Economic Development Transportation Fund in s. 288.063, F.S.
- Encouraging local businesses to adopt streamlined permitting processes for businesses within EEZs.
- Modifying the current enterprise zone tax credits and tax refunds for use by businesses and property owners within EEZs.
- Amending s. 299.106, F.S., the Qualified Target Industry (QTI) tax refund program to remove certain wage requirements for businesses located in EEZs, and to allow local governments to add types of businesses that could qualify for the QTI program.
- Allowing businesses within EEZs to transfer their unused tax credits.
- Providing sales tax refunds for the purchase of products used in clean technology industries within an EEZ.

Pilot communities

The City of Miami Beach, which is a compact, dense, built-out urban area with 13,400 residents per square mile, is interested in using the EEZ to improve intermodal, energy-efficient transportation in the city and to explore opportunities to re-use or re-purpose existing infrastructure.

Sarasota County's two sites are the opposite of Miami Beach: one is a 1,000-acre undeveloped site and the other is its 7,000-acre Central County solid waste complex, where the county plans to build a methane gas-to-energy conversion plant.

The Florida Enterprise Zone Program

The Legislature created the enterprise zone program in 1982 to encourage economic development in economically distressed areas of the state by providing tax incentives designed to

⁴ On file with the Senate Commerce and Tourism Committee.

⁵ Section 290.0058, F.S., specifies the criteria of enterprise zones.

⁶ The U.S. Green Building Council developed these industry-accepted guidelines. More information is available at: <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19> Last visited March 22, 2011.

induce private investment that creates jobs and increases property values. There currently are 59 EZs, all of which were either created or reauthorized by the Legislature.

OTTED reports that between October 1, 2009, and September 30, 2010:⁷

- 7,559 businesses moved into or were created in enterprise zones;
- 6,073 jobs were created by businesses there;
- About \$67.6 million in state funds and nearly \$20 million in local-government financial incentives were approved during that same period; and
- \$54 million, or nearly 80 percent, of the state incentive funds went for state sales and use tax refunds for the purchase of building materials within enterprise zones).

Sections 290.001-290.016, F.S., authorize the creation of enterprise zones; establish criteria and goals for the program; require a strategic plan; require annual reporting to OTTED; and establish state incentives for businesses.

Florida's enterprise zones qualify for various incentives from corporate income tax and sales-and-use tax liabilities:

- Sales and use tax refunds:
 - Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone: Provides a refund for taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid, whichever is less. For projects where at least 20 percent of the employees live in the enterprise zone, the refund is the lesser of \$10,000 or 97 percent of the tax paid.
 - Business Equipment Used in Enterprise Zones: Provides a refund for taxes paid on the purchase of certain equipment, up to \$5,000 or 97 percent of the tax paid, whichever is less. For projects where at least 20 percent of the employees live in the enterprise zone, the refund is the lesser of \$10,000 or 97 percent of the tax paid.
 - Business Property Used in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain business property, up to \$5,000 or 97 percent of the tax paid per parcel of property, whichever is less. The property also must have been used exclusively in an enterprise zone for at least 3 years.
 - Community Contribution Tax Credit: Provides 50-percent sales tax refund for donations made to local community development projects in enterprise zones.
- Sales and use tax credits:
 - Rural Enterprise Zone Jobs Credit against Sales Tax: Provides a tax credit for 20 percent, 30 percent, or 45 percent of wages paid to new employees, depending on where they live.
 - Urban Enterprise Zone Jobs Credit against Sales Tax: Provides a tax credit for 20 percent or 30 percent of wages paid to new employees, depending on where they live.

⁷ Florida Enterprise Zone Program Annual Report, dated October 1, 2009 – September 30, 2010. On file with the Senate Commerce and Tourism Committee. Prepared by OTTED with information provided by the state Department of Revenue and the 59 local enterprise zone coordinators.

- Available state corporate income tax incentives for enterprise zones include:
 - Rural Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit equal to 20 percent, 30 percent, or 45 percent of wages paid to new employees, depending on where they live.
 - Urban Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 20 percent or 30 percent of wages paid to new employees, depending on where they live.
 - Enterprise Zone Property Tax Credit: Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
 - Community Contribution Tax Credit: Provides a 50-percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects located in enterprise zones.
- Sales tax exemptions:
 - Electrical Energy Used in an Enterprise Zone: Provides 50-percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.

As mentioned above, the local incentives provided by cities and counties during the same 12-month period was close to \$20 million. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.

QTI tax refund program

The QTI Tax Refund Incentive Program was created in 1994 as part of a retooling of Florida's economic development efforts.⁸ The QTI program was designed to encourage the recruitment or creation of higher-paying, higher-skilled jobs for Floridians, by awarding eligible businesses refunds of certain state or local taxes paid in exchange for creating jobs.

Eight industry sectors have been designated as “targeted industries”: Clean Tech; Life Sciences; Information Technology; Aviation/Aerospace; Homeland Security/Defense; Financial/Professional Services; Emerging Technologies; and Other Manufacturing.⁹ Within each sector are several specific types of target businesses.

The amount of the refund is based on the wages paid, number of jobs created, and where in the state the eligible business chooses to locate or expand, but the basic refund is \$3,000 per employee over the term of the incentive agreement signed by the business and the Governor's Office of Tourism, Trade and Economic Development (OTTED). The per-employee refund amount can be as high as \$11,000, if multiple conditions are met.

The QTI incentive is a refund against seven state taxes and the local ad valorem tax paid by eligible businesses. Most commonly, businesses have used the QTI to obtain reimbursements for ad valorem, state sales tax, and state corporate income tax liabilities.

⁸ Section 288.106, F.S.

⁹ 2011 Qualified Targeted Industries for Incentives list on file with the Senate Commerce and Tourism Committee.

A key feature of the QTI incentive is that the business must agree to pay at least 115 percent of the average private-sector wage of the state, the county or the standard metropolitan area in which the business is or will be located, but exceptions may be granted under specific criteria. Typically, a cash or in-kind match is required from the local government, although this can be waived for rural counties or under other circumstances.

As a cash refund, the QTI incentive is paid by OTTED only after the yearly agreement conditions have been met. The duration of a QTI agreement is 3 to 4 years.

As of June 30, 2009, some 880 business projects have been recommended for the QTI incentive; 848 have been approved by the former Department of Commerce or OTTED; and 730 have entered into QTI agreements with the state. Of those 730 projects, 260 remain “active,” meaning they are eligible to receive tax refunds through the QTI program. These 260 projects have committed to create 45,043 jobs, paying an average wage of \$44,916.

As noted above, for FY 10-11, the Legislature appropriated \$12.23 million to OTTED for use as tax refunds to Qualified Defense Contractor and Space Flight Business (QDSC) and Qualified Target Industry (QTI) tax refund program recipients.

Transportation Economic Development Fund

Section 288.063, F.S., provides state grants to improve transportation access and infrastructure for businesses that are planning to relocate or expand. This is commonly referred to as the “road fund.” OTTED awards the grants to local governments where the businesses are located, to contract for the transportation improvements. OTTED considers a number of factors in selecting the projects, including:

- Jobs to be created by the business,
- Wages to be paid, and
- Whether the transportation improvement is necessary to induce the business to locate or expand in a particular community.

In FY 10-11, the Legislature appropriated \$20 million for economic development transportation projects, of which \$16.3 million was specifically earmarked, leaving \$3.7 for general projects under OTTED’s discretion.

Comprehensive Planning Requirements

Adopted by the 1985 Legislature, the Local Government Comprehensive Planning and Land Development Regulation Act - also known as Florida’s Growth Management Act - requires all of Florida’s 67 counties and 410 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development.

Comprehensive plans contain chapters that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements.

A key component of the growth management act is its concurrency provision that requires many types of facilities and services, such as transportation systems, to be available concurrent with

the impacts of development. In general, local governments must use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring that transportation facilities and services are available, or “concurrent” with the impacts of development.

To carry out transportation concurrency, local governments must define what constitutes an adequate level of service (LOS) for its transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. In 1992, Transportation Concurrency Management Areas were authorized, allowing an area-wide LOS standard (rather than facility-specific) to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems.

Subsequently, two additional relaxations of concurrency have been authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to reduce the adverse impact transportation concurrency may have on urban infill and redevelopment by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs of transportation projects.

Another aspect of growth management in Florida is the development of regional impact (DRI) review process. Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. Over the years several types of projects, or projects that meet certain thresholds, have been exempted from the DRI review process.

A third growth-management tool is the relatively new “density bonus.” It was authorized by the Legislature in 2006 to encourage local governments to promote the building of affordable housing. One form a density bonus may take is allowing developers to build additional residential units in exchange for the provision of affordable housing. The amount of the bonus would be different for different local governments, and even different projects within each jurisdiction. Several Florida communities have proposed amendments to their comprehensive plans, for DCA review, to allow density bonuses.

The newest tool is the Alternative State Review Process, created in s. 163.32465(2) F.S. In 2007, the Legislature created the pilot program to provide an alternate, expedited process for plan amendments with limited state-agency review. The alternative state review process shortens the statutorily prescribed timeline for comprehensive plan amendments process from 136 days to 65 days.

Currently, Pinellas and Broward counties and the municipalities within those counties, plus the cities of Jacksonville, Miami, Tampa and Hialeah are statutorily named as participants in the pilot program.

III. Effect of Proposed Changes:

SB 1460 makes businesses within EEZs eligible for 11 state tax exemptions, state tax refunds, and state tax credits that are used as economic development incentives. The bill also adds EEZ communities created under s. 377.809, F.S., to the list of local government entities that can participate in the state's Alternate State Review Process for comprehensive plan amendments, potentially reducing by half the review time.

Section 1: Amends s. 163.32465(2), F.S., to add EEZ communities created under s. 377.809, F.S., to the list of local government entities that can participate in the state's Alternate State Review Process for comprehensive plan amendments.

Section 2: Amends s. 212.08, F.S., to create four sales and use tax exemptions for purchases made by businesses within EEZs. They are:

- Machinery and equipment used in the production of renewal energy within an EEZ.
- Building materials used in the construction or rehabilitation of energy-efficient structures of real property within an EEZ. The building materials must meet LEED standards. The language related to the processes of claiming the tax refund and most of the definitions are nearly identical to the existing sales and use tax exemption for building materials used in enterprise zones.
- Business property purchased for use in an EEZ, to be taken as refund. Again, the language is nearly identical to an exemption for business property used within a ch. 290, F.S., enterprise zone.
- Electrical energy used by a qualified business in an EEZ.

Section 3: Amends s. 212.096, F.S., to extend the enterprise zone jobs tax credit against sales and use tax to businesses in the EEZs that meet the eligibility criteria.

Section 4: Amends s. 220.181, F.S., to extend the enterprise zone jobs tax credit against corporate income tax liability accrued by businesses within the EEZ that meet the eligibility criteria.

Section 5: Amends s. 220.182, F.S., to extend the enterprise zone property tax credit against corporate income tax liability to businesses within the EEZs that meet the eligibility criteria.

Section 6: Amends s. 220.183, F.S., to extend eligibility to sponsor projects for the Community Contribution Tax Credit to local governing boards which has an EEZ within its jurisdiction.

Section 7: Amends s. 288.047, F.S., to add EEZs to the list of designated communities where businesses are eligible for a special set-aside of Quick Response Training funds. The other designated communities are enterprise zones and brownfield areas.

Section 8: Amends s. 288.063, F.S., to add to the list of selection criteria for "road fund" incentive dollars the location of an economic development project in an EEZ.

Section 9: Amends s. 288.106, F.S., the QTI tax refund incentive program, to make changes applicable to projects within EEZs. This section:

- Defines EEZs as designated pursuant to s. 377.809, F.S.;
- Modifies the definition of “target industry business” to include any business engaged in a target industry as identified by the local governing body of an EEZ, pursuant to local ordinance and approved by OTTED;
- Exempts a target industry business within an EEZ from having to meet the state target industry business criterion of being “market and resource independent,” pursuant to the current s. 288.106(1)(t)4., F.S.;
- Further specifies that despite statutory prohibitions of certain types of industries being ineligible for the QTI program, any business within an EEZ could be a target industry and thus eligible for the state incentive if OTTED and the local governing board where the EEZ exists determine that the business is eligible because it is consistent with a local ordinance and the EEZ’s goals and strategic plan;
- Adds targeted industry businesses within EEZs eligible to earn double the per-employee tax refund, and to receive higher tax refund subsidies, as do businesses in enterprise zones, annually and over the long-term;
- Waives the minimum wage requirement of at least 115 percent of the average area private sector wage for businesses in EEZs; and
- Waives the requirement for EEZ businesses that to receive a prorated QTI tax refund, the business must pay its employees wages of at least 115 percent of the average area private sector wage.

Section 10: Amends s. 377.809, F.S., which created the EEZ pilot program. SB 1460 modifies the statute to:

- Remove the adjective “pilot” from the existing provisions.
- Specifies that beginning July 1, 2011, and after the adopting of a local ordinance by the local governing board for an EEZ, qualified businesses within the EEZ:
 - Are eligible for the 11 state financial incentives specified in earlier sections of the bill; and
 - Are eligible to benefit from changes in the state growth management law related to expedited review of plan amendments and density and intensity bonuses for development.
- Reiterates that comp plan amendments related to EEZ projects are not subject to the twice-yearly window of review.
- Specifies that the application of ch. 163, F.S., provisions in this section prevail if there is a conflict with similar provisions elsewhere in statute.
- Specifies that any agency or judicial review of a comp plan amendment for a development within an EEZ is limited to the extent with which the amendment furthers the goals expressed in s. 377.809, F.S.
- Specifies that, notwithstanding any law to the contrary, a public utility (as defined in s. 366.02(1), F.S.), may grant discounts of up to 50 percent on tariffed rates to small businesses within an EEZ, for a period not to exceed 5 years.
- Gives projects located in an EEZ priority ranking, to the extent practicable, for grants administered by the Florida Energy and Climate Commission or any other state energy program or for grants from other sources such as qualified energy conservation bonds.
- Defines the terms “energy-efficiency development” and “clean technology industries and businesses” is broadly defined as encompassing a “diverse range of products, services,

- and processes that harness renewable materials and energy sources and reduce the use of natural resources, reduce greenhouse gas emissions, and result in energy conservation.”
- Requires local governing boards whose jurisdictions includes an EEZ to adopt an ordinance in order for EEZ businesses to be able to access state incentives and use the alternate comp planning processes.
 - Specifies content of the EEZ ordinance, and allows the local governing board to revise the boundaries of its EEZ with DCA’s approval.
 - Effective July 1, 2011, specifies that the total amount of tax credits, tax refunds, and tax exemptions that may be granted to businesses within each EEZ is capped at \$300,000 per year per EEZ, for a total of \$600,000 per year. Unused credits may be carried forward 5 years, and used by the business to defray future tax liability.
 - The local governing board with jurisdiction over an EEZ must track and account for all levels of credits and refunds granted, and for credit amounts carried over from a previous year.
 - Allows an eligible EEZ business, with approval from OTTED, to transfer any of the unused state tax credits it has received under the program, except for the premium insurance tax credit allowed under the community contribution tax credit program in s. 624.5105, F.S. Specifically:
 - Unused credits may be transferred no later than 5 years after being awarded, at which point they expire.
 - OTTED is directed to notify DOR of taxpayer elections and transfers.
 - An eligible business with unused credits may transfer any unused sales and use tax credits one time to one entity, and may transfer unused corporate income tax credits one time to up to four entities.
 - Entities receiving transferred credits have the same rights and limitations as the industry or business located in an EEZ that was awarded the tax credits, except that they may not subsequently transfer the tax credits.
 - Requires a report from DCA and OTTED to the Governor, President of the Senate, and Speaker of the House of Representatives by February 15, 2015, evaluating whether the pilot program has demonstrated success. Current law requires that report by February 15, 2012.

Section 11: Amends s. 445.003, F.S., to make businesses within EEZs eligible for federal workforce grants.

Section 12: Amends s.220.191, F.S., to correct a cross-reference.

Section 13: This act shall take effect July 1, 2011.

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:

The Revenue Estimating Conference (REC) has not evaluated SB 1460. However, in April 2010, the REC met to evaluate the fiscal impact of a nearly identical bill filed during the 2010 legislative session. The REC, by consensus, adopted a (\$300,000) cash reduction to the state General Revenue Fund in FY 11-12; a (\$600,000) cash reduction in FY 12-13, and a (\$900,000) cash reduction in FY 13-14.

B. Private Sector Impact:

Indeterminate, but likely positive, to the extent that the City of Miami Beach and Sarasota County use these incentives to successfully recruit businesses to their EEZs, or expand existing businesses, that will create jobs.

C. Government Sector Impact:

Indeterminate. DOR likely will incur some costs in modifying its computer software to track, record, and refund these new tax credits.

VI. Technical Deficiencies:

Section 10 of SB 1460 still has references to “pilot program,” although it appears the bill’s intent is to codify and fully implement the program.

VII. Related Issues:

Section 9 of the bill modifies the s. 288.106, F.S., statewide definition of “target industry business” to allow any type of business within an EEZ that meets the local definition of a target industry to access the state QTI refund program. This could lead to businesses that currently are explicitly excluded from participation in the QTI program – such as retail businesses, restaurants and lodging, mining, and electrical utilities – to access the state incentive if they meet the EEZ definition of a target industry.

Also, Section 10 of the bill creates the ability of EEZ businesses to transfer their unused credits over a period of 5 years, but does establish a process for how and when this is done. Existing statutory provisions on tax-credit transfers are much more specific.

Finally, the bill takes effect July 1, 2011, and anticipates that businesses will be able to take credits that same year. With the required ramp-up of the local programs, including passage of ordinances to create business eligibility criteria and to outline the local application process, the earliest that businesses would be able to earn and claim credits likely may be no earlier than July 1, 2012.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial 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.



221454

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete lines 22 - 45
and insert:
dealer, provide a written disclosure of the week and year of
manufacture of the replacement tire to the purchaser. The
disclosure must be included on the customer's receipt, in at
least 10-point bold type. The disclosure must be initialed and
dated by the purchaser, who must be given a copy, and the dealer
must retain the original for at least 3 years. The disclosure
shall include the following information:

(a) The week and year the tire was manufactured; and



221454

13 (b) The length of the remaining factory warranty on the
14 tire.

15 (2) This section does not affect any rights or duties
16 provided under other applicable laws.

17 (3) This section does not apply to the private sale of used
18 tires or tires sold in the course of the sale or resale of
19 vehicles.

20
21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete lines 4 - 5

25 and insert:

26 disclose to purchasers the week and year of
27 manufacture and warranty information;

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 Commerce and Tourism Committee

BILL: SB 1482

INTRODUCER: Senator Evers

SUBJECT: Consumer Protection

DATE: March 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gault	Cooper	CM	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 1482 creates s. 501.20795, F.S., to require retail tire dealers to explicitly disclose to purchasers the age of the tires and provide warnings related to tire degradation.

II. Present Situation:

Tire Degradation

From 1973 to 2004, the average tread life of a tire has increased from about 24,000 miles to about 44,700 miles.¹ With this increase came an increase in the amount of time tires are spending on vehicles or in the market. Current federal standards only require manufactured tires to have certain performance characteristics, but it is generally unknown whether performance characteristics will last throughout the life of the tire.² The National Highway Traffic Safety Administration (NHTSA) is currently researching the issue in their Tire Aging Test Development Project.

Many factors can contribute to the degradation process including aging, under- or over-inflation of tires, overloading of vehicles, road hazards, structural defects, and improper installation and storage.³ NHTSA writes that underinflated and overloaded tires are the leading causes of tire

¹ NHTSA Tire Aging Test Development Project. Phase 1. Report 1. (October, 2009). Page 3. See: [http://www.nhtsa.gov/DOT/NHTSA/NVS/Vehicle%20Research%20&%20Test%20Center%20\(VRTC\)/ca/Tires/811201.pdf](http://www.nhtsa.gov/DOT/NHTSA/NVS/Vehicle%20Research%20&%20Test%20Center%20(VRTC)/ca/Tires/811201.pdf).

² Id.

³ See: <http://www.safercar.gov/Vehicle+Shoppers/Tires/Tires+Rating/Tire+Aging>.

failure, and found in one of their surveys that about 30 percent of cars and light trucks have at least one tire underinflated by 8 psi.⁴ Underinflated tires are often unnoticeable to drivers until checked by an actual tire pressure gauge. Overall tire degradation may also be difficult to assess visually, regardless of professional experience.⁵ For instance, a tire may appear to be in good condition externally while the structural features internally may be breaking down.

Tire Aging

NHTSA explains tire aging in the following manner:

The structural integrity of a tire can degrade over an extended period of time. When that occurs, tires are more prone to catastrophic failure, which could, at best, cause an inconvenience, or, at worst, lead to a crash. The degradation of a tire occurs over time, mostly the result of a chemical reaction within the rubber components. That aging process can be accelerated by heat and sunlight.⁶

Several reports have supported the belief that high average ambient temperatures may wear a tire's structural integrity. In the Firestone and Ford Explorer accidents of 2000-2001, a majority of the fatalities occurred in Florida, Texas, Arizona, and California.⁷ In one insurance company's reports from 2002 to 2006, data showed that "27 percent of its policy holders are from Texas, California, Louisiana, Florida, and Arizona, but 77 percent of the tire claims came from these states and 84 percent of these were for tires over 6 years old."⁸ And in a scrap tire study by the Rubber Manufacturers Association, over 4 years, tire damage was greater in warmer states.⁹

NHTSA Tire Aging Test Development Project

Since the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, the NHTSA has been developing ways to accelerate the tire aging process and test its properties. Tests were conducted in Phoenix, Arizona since it has one of the highest ambient air temperatures of any major city. The study has five phases:

- Phase 1: Studied how tires changed during actual service as measured by changes in their road-wheel performance levels and quantitative material properties when compared to new versions of each tire;¹⁰
- Phase 2: Focused on developing an accelerated, laboratory-based tire test that simulates real-world tire aging and evaluated the remaining structural durability of the aged tires;¹¹
- Phase 3: Same focus as Phase 2;

⁴ See: <http://www.safercar.gov/Tire>. PSI meaning pounds per square inch.

⁵ NHTSA Tire Aging Test Development Project. Phase 1. Report 1. (October, 2009). Page 6. See: [http://www.nhtsa.gov/DOT/NHTSA/NVS/Vehicle%20Research%20&%20Test%20Center%20\(VRTC\)/ca/Tires/811201.pdf](http://www.nhtsa.gov/DOT/NHTSA/NVS/Vehicle%20Research%20&%20Test%20Center%20(VRTC)/ca/Tires/811201.pdf).

⁶ See: <http://www.safercar.gov/Vehicle+Shoppers/Tires/Tires+Rating/Tire+Aging>.

⁷ NHTSA Research Report to Congress on Tire Aging (August, 2007). Page 11.

⁸ Id.

⁹ Id.

¹⁰ NHTSA Tire Aging Test Development Project. Phase 1. Report 1. (October, 2009). Page ix. See: [http://www.nhtsa.gov/DOT/NHTSA/NVS/Vehicle%20Research%20&%20Test%20Center%20\(VRTC\)/ca/Tires/811201.pdf](http://www.nhtsa.gov/DOT/NHTSA/NVS/Vehicle%20Research%20&%20Test%20Center%20(VRTC)/ca/Tires/811201.pdf).

¹¹ Id. at page 6.

- Phase 4: Validation of the final tire-aging test, completed on a large cross-section of tire models of various service types¹² before Federal Motor Vehicle Safety Standards (FMVSS) 139 took effect;¹³ and
- Phase 5: Validate the final tire-aging test against tires that are regulated under FMVSS 139.

Research has been completed for phases one through four, but only reports for phases 1 and 2 have been released. Studies are currently being conducted on Phase 5 of the project. The results of Phase 5 will help the agency decide whether to issue a tire aging proposal.

Current Regulations

The Code of Federal Regulations requires tire manufacturers to mark each tire with the symbol “DOT” followed by a tire identification number (TIN).¹⁴ The TIN is four digits – the first two digits represent the week the tire was manufactured, and the last two digits represent the year it was manufactured. The TIN is found on the inner sidewall of older tire models and on the outer sidewall of newer models.¹⁵

Existing federal regulations do not require tire retailers to provide a warning about tire aging.

Reports suggest that no states have adopted legislation on warning requirements for tire aging. However, within the past couple of years, related bills have been proposed in at least three other states (California, Hawaii, and New York).^{16,17,18}

III. Effect of Proposed Changes:

SB 1482 creates s. 501.20795, F.S., to require retail tire dealers to disclose to purchasers the age of tires and provide warnings related to tire degradation.

The bill requires tire retailers to disclose to purchasers, no later than the time of sale, a written disclosure that includes the following:

- The week and year the tire was manufactured;
- The factory warranty that exists; and
- The statement:
Passenger and light truck tires, including spare tires and tires that are stored or have had little or no use, deteriorate as they age and are more prone to sudden failure that can cause a crash. Heat caused by hot climates or frequent high-loading conditions can

¹² Id.

¹³ Tire manufacturers were required to meet new standards in 2007.

¹⁴ CFR §571.139.

¹⁵ See: <http://www.safercar.gov/Vehicle+Shoppers/Tires/Tires+Rating/Tire+Aging>.

¹⁶ California Assembly Bill 496 (2009) required an age disclosure and warning statement on tire aging. See: <http://democrats.assembly.ca.gov/members/a48/press/20090528AD48PR01.htm>. It reportedly passed the Assembly but was withdrawn by sponsors.

¹⁷ Hawaii Senate Bill 1064 (2009) prohibited the sale of new tires over 6 years old. It was carried over to the 2010 regular session. See: http://www.capitol.hawaii.gov/session2009/lists/measure_indiv.aspx?billtype=SB&billnumber=1064.

¹⁸ New York Assembly Bill 05298 and Senate Bill 7002 require date of manufacture to be on both walls of a tire and promote education about the effects of tire aging. See: <http://public.leginfo.state.ny.us/menugetf.cgi>.

accelerate the aging process. Most vehicle manufacturers recommend that passenger or light truck tires be replaced after 6 years, regardless of the remaining tread depth.

Retailers are also required to hold the original copy of the written disclosure, which must be signed and dated by the purchaser, for 3 years.

Failing to follow the requirements is considered a deceptive and unfair trade practice, and will subject the violator to a civil penalty of not more than \$250 for each violation.

Any penalties received will be deposited into the General Inspection Trust Fund and used to pay the costs of enforcing this action.

The bill requires the Department of Legal Affairs to adopt rules to administer its provisions.

This bill does not:

- Affect any rights or duties provided under other laws; or
- Apply to the private sale of used tires or tires on used vehicles.

The bill provides an effective date of July 1, 2011.

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:

No direct costs to consumers exist as a result of this bill. However, tire retailers may have to create new forms to accommodate the notice requirement of the bill.

C. Government Sector Impact:

The Department of Legal Affairs will incur costs associated with developing rules to administer as well as to enforce the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. Committee Substitute – Statement of Substantial 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.



557780

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 20 and 21
insert:

Section 1. Section 213.053, Florida Statutes, is amended to
read:

213.053 Confidentiality and information sharing.—

(8) Notwithstanding any other provision of this section,
the department may provide:

(k)1. Payment information relative to chapters 199, 201,
202, 212, 220, 221, and 624 to the Office of Tourism, Trade, and
Economic Development, or its employees or agents that are



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identified in writing by the office to the department, in the administration of the tax refund program for qualified defense contractors and space flight business contractors authorized by s. 288.1045 and the tax refund program for qualified target industry businesses authorized by s. 288.106.

2. Information relative to tax credits taken by a business under s. 220.191 and exemptions or tax refunds received by a business under s. 212.08(5)(j) to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, in the administration and evaluation of the capital investment tax credit program authorized in s. 220.191 and the semiconductor, defense, and space tax exemption program authorized in s. 212.08(5)(j).

3. Information relative to tax credits taken by a taxpayer pursuant to the tax credit programs created in ss. 193.017; 212.08(5)(g), (h), (n), (o) and (p); 212.08(15); 212.096; 212.097; 212.098; 220.181; 220.182; 220.183; 220.184; 220.1845; 220.185; 220.1895; 220.19; 220.191; 220.192; 220.193; 288.0656; 288.99; 290.007; 376.30781; 420.5093; 420.5099; 550.0951; 550.26352; 550.2704; 601.155; 624.509; 624.510; 624.5105; and 624.5107 to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, for use in the administration or evaluation of such programs.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental,



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shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

4. Information relative to single sales factor apportionment used by a taxpayer pursuant to the program created in s. 220.153 to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, for use in the administration or evaluation of the program.

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

And the title is amended as follows:

Delete line 3

and insert:

s. 213.053, F.S.; allowing the Office of Tourism, Trade, and Economic Development access to confidential taxpayer information related to the single sales apportionment factor; amending s. 220.131, F.S.; conforming provisions to changes



840934

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment

Delete line 53
and insert:
taxable year of such determination. For the purposes of this
section, "capital expenditure" means an investment in land,
buildings, and equipment. Also, for the purposes of this



189118

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Substitute for Amendment (840934)

Delete lines 53 - 59
and insert:
taxable year of such determination. For the purposes of this
section, "capital expenditure" means an investment in land,
buildings, or equipment. Also, for the purposes of this section,
"full-time employee" does not include an employee who was hired
to construct improvements to real property.



898440

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment

Delete line 85
and insert:
taxable years, at which time the taxpayer may renew the election
by the

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 Commerce and Tourism Committee

BILL: SB 1506

INTRODUCER: Senator Ring

SUBJECT: Corporate Income Tax

DATE: March 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

Florida and 46 other states use some version of a three-factor apportionment to tax business earnings of corporations that operate in more than one state. The three factors are: sales tax receipts, payroll expenditures, and value of real and tangible personal property. Even if the factors are equally weighted, businesses with large, expensive facilities or a large workforce can pay a disproportionate share of taxes, compared with smaller businesses.

The way most states address these issues is to give greater “weight” to sales tax receipts. In fact, 24 states now base their corporate income tax (CIT) calculations on “single-sales apportionment,” meaning they only calculate a corporation’s in-state sales tax receipts divided by its total sales tax receipts, and do not include payroll and property values in the calculations. Florida currently double-weights sales tax receipts, meaning the calculation for CIT liability gives the business’ sales tax receipts value twice the weight as it gives payroll and property.

SB 1506 allows an eligible business to voluntarily have its CIT calculation based on the single-sales apportionment factor if it has:

- On or after July 1, 2013, made qualified capital expenditures in Florida of at least \$250 million, and
- Maintained the same number of employees it had when it applied for permission to have its CIT calculated using the single-sales apportionment factor. The employees must have been on the payroll at least 1 year and receive an average weekly wage greater than the state average private-sector weekly wage or the local average private-sector weekly wage for the business’ industry sector, whichever is less.

Eligible businesses must be the parent company with an affiliated group of corporations that file consolidated tax returns. In effect, corporations headquartered in Florida with operations in more than one state are eligible to use this method. Financial institutions are prohibited from using this methodology.

The bill sets up processes by which the Governor's Office of Tourism, Trade, and Economic Development (OTTED) will review and certify applications from corporations seeking the single-sales apportionment factor calculation and to revoke a certification. Also, the Department of Revenue (DOR) is authorized to review a certified business' documentation and to recapture credits, if necessary.

Both agencies are authorized to promulgate rules necessary to implement the provisions of this bill.

SB 1506 creates s. 220.153, F.S., and amends s. 220.131, F.S.

II. Present Situation:

Florida's corporate income tax

In response to a constitutional amendment that authorized the levy of a state corporate income tax, the 1971 Legislature adopted a 5-percent corporate income tax, which became effective on corporate incomes earned after January 1972. In 1984, the Legislature raised the state's corporate income tax rate to 5.5 percent.

Florida banks and savings institutions, as defined in s. 220.62, F.S., pay what is called a "franchise tax" that is identical to the corporate income tax.

Florida also levies an alternative minimum tax (AMT) of 3.3 percent against the net income of corporations who have elected to use that system for their federal tax computations.¹ The tax due is whichever amount is greater: the regular Florida corporate income tax or the Florida AMT.

Florida corporate income tax liability is computed using federal taxable income, modified by certain Florida adjustments, to determine adjusted federal income. A corporation doing business outside Florida may apportion its adjusted federal income for Florida tax purposes, using a three-factor formula. The formula is a weighted average, designating 25 percent each to factors for property and payroll, and 50 percent to sales.²

¹ More information about the AMT for corporations is available from many sources, but one of the most concise yet understandable explanations was prepared by the nonpartisan Tax Policy Center, an affiliate of The Brookings Institute. The article is available at <http://www.taxpolicycenter.org/publications/url.cfm?ID=1000515>. Last visited Feb. 24, 2010.

² Section 220.15, F.S., details the apportionment formulas for most corporations. Section 220.151, F.S., details the apportionment for entities that pay the premium insurance tax and for transportation entities. Finally, s. 220.152, F.S., sets out a process for how DOR would apportion the Florida corporate income tax liability for businesses that don't fit into the other categories; in such cases, the taxpayer is required to petition DOR to compute its apportionment and must agree to provide the agency additional documentation.

Chapter 220, F.S., is very specific about what types of businesses must file corporate income tax forms. Briefly:³

- Corporations and artificial entities that conduct business, or earn or receive income in Florida, including out-of-state corporations, must file a Florida corporate income tax return unless exempt. They must file a return, even if no tax is due.
- Corporations and other artificial entities, including those located in other states, that are partners in a partnership or members of a joint venture doing business in Florida must file.
- Limited liability companies (LLCs) may or may not have to file a Florida corporate income tax return, depending on certain factors:
 - An LLC classified as a corporation for Florida and federal income tax purposes, is subject to the Florida Income Tax Code and must file a Florida corporate income tax return.
 - An LLC classified as a partnership for Florida and federal income tax purposes, must file Form F-1065 if one or more of its owners is a corporation. In addition, the corporate owner of an LLC that is classified as a partnership for Florida and federal income tax purposes must file a Florida corporate income tax return.
 - A single-member LLC, disregarded for Florida and federal income tax purposes, does not have to file a separate Florida corporate income tax return. However, the income of the company is not exempt from tax if a corporation owns the company, whether directly or indirectly. In this case, the corporation must file Form F-1120 reporting its own income, and the income of the single member LLC.
- Sole proprietorships, individuals, estates of decedents, and testamentary trusts are exempted and do not have to file a return.
- “S” corporations and tax-exempt organizations usually do not have to file a Florida corporate income tax return if they do not have federal taxable income. If they have federal taxable income, however, they must then file a Florida corporate income tax return and pay any tax due.

Florida has adopted the federal definition of taxable income. A Florida corporate taxpayer’s net income is its adjusted federal income, or the share of its adjusted federal income for the year that is apportioned to Florida, plus non-business income allocated to Florida, less the \$5,000 exemption. Also, a Florida corporation that pays federal AMT must compute its Florida taxes under the AMT system that same tax year.⁴

In FY 2009-2010, the state collected a net \$1.79 billion in corporate and franchise taxes, which were deposited into the General Fund.⁵ An estimated \$1.9 billion is the latest estimated net collections for FY 2010-2011.⁶

³ The source for this is a primer prepared by the Florida Department of Revenue. Available at <http://dor.myflorida.com/dor/taxes/corporate.html>. Last visited March 26, 2011.

⁴ Taxpayers that chose to use the AMT system are allowed, in later years, to take a credit equal to the amount of Florida AMT paid over the amount of Florida “regular” tax that would have otherwise been due.

⁵ Information available from the Florida Office of Economic and Demographic Analysis website. Report available at: <http://edr.state.fl.us/Content/conferences/generalrevenue/grchng.pdf>. Last visited March 25, 2011.

⁶ Ibid.

Information provided by the Governor's Office in 2010 indicated that Florida has 35,820 corporate taxpayers and 630 AMT taxpayers.

Background on business earnings apportionment

Forty-seven states use some version of a three-factor apportionment to tax business earnings: sales tax receipts, payroll, and property value.⁷ Even if the factors are equally weighted, businesses with large, expensive facilities or a large workforce can pay a disproportionate share of taxes, compared with smaller businesses. Complicating the taxable income calculation is how to apportion revenues for businesses that operate in more than one state.

The way most states address these issues is to give greater "weight" to sales tax receipts. At least 24 states now base their corporate income tax (CIT) calculations on "single-sales apportionment," meaning they only calculate a corporation's in-state sales tax receipts divided by its total sales tax receipts, and do not include payroll and property values in the calculations.

For most corporations, Florida double-weights sales tax receipts, meaning the calculation for CIT liability gives the business' sales tax receipts value twice the weight as it gives payroll and property values.

Very simply, the basic Florida formula might be expressed this way:

$$\text{Taxable Florida income} = \frac{2 \times (\text{FL sales receipts})}{\text{All sales receipts}} + \frac{\text{FL payroll costs}}{\text{All payroll costs}} + \frac{\text{FL property value}}{\text{All property value}}$$

Weighted apportionment has proponents and detractors among economists and tax experts.⁸ In general, proponents of single-sales apportionment contend that it encourages more manufacturing facilities and businesses providing higher-wage jobs to locate in states using this formula. The loss of corporate income tax revenue is offset eventually, they say, by the increased private investment and greater employment. In general, detractors say the revenue loss to a state treasury may never recover, because some of the new business income will not be taxed and the new employment may not generate enough tax revenue.

III. Effect of Proposed Changes:

SB 1506 creates an optional mechanism for eligible corporations to have their Florida income calculated for Florida income tax purposes using the single-factor sales apportionment methodology.

⁷ Final Report and Recommendations of the Florida Task Force on the Study of Biotech Competitiveness. Published August 12, 2009. Copy on file with the Senate Commerce and Tourism Committee.

⁸ A sampling of research papers includes: "A Twentieth Century Tax in the Twenty-First Century: Understanding State Corporate Tax Systems," available at <http://www.taxfoundation.org/research/show/1096.html>; "Single-factor Sales Apportionment Formula in Georgia: What is the Net Revenue Effect?," available at <http://aysps.gsu.edu/frc/files/report55.pdf>; and "The Economic Impact of Single Factor Sales Apportionment for the State of New York," available at <http://www.ppinys.org/reports/2001/sglsales/sglsales.htm>. A 2010 chart of how the states apportion income for corporate tax purposes is available at http://btrc.maryland.gov/BTRsub/documents/Breakdown_of_States.pdf.

Section 1: Amends s. 220.131, F.S., to add a cross-reference and make technical grammatical changes. The cross-reference adds the option for eligible corporations to have their Florida income calculated using the single sales apportionment methodology.

Section 2: Creates s. 220.153, F.S., to create the optional alternative corporate income tax calculation known as single sales apportionment. Eligible for this apportionment are corporations that:

- Are parent companies with affiliated groups of corporations that file consolidated tax returns;
- Operate in Florida and other states; and
- Which can demonstrate to OTTED that:
 - On or after July 1, 2013, it has made at least \$250 million in qualified capital expenditures in Florida; and
 - Has maintained the same number of full-time employees in its Florida operations that were employed when it first notified OTTED of its intent to apply for the single-factor sales apportionment methodology. Such employees must work an average of at least 36 hours per week for an entire year and receive an average weekly wage greater than the lower of the state or local average weekly wages for the taxpayer's industry. "Full-time employee" does not include an employee who is hired to construct improvements to real property.

Prohibited from using this methodology are financial institutions defined in ss. 220.15(6) and 220.62, F.S.

SB 1506 establishes the 2-year process by which an eligible corporation applies to and is qualified by OTTED. First, the corporation must notify OTTED of its intent to submit an application to be qualified to have its adjusted federal income apportioned under the single sales apportionment methodology. Next, the corporation must submit its application for qualification within 2 years after notifying OTTED of its intent to qualify. The application must be made under oath and provide all information required by OTTED rule for determining the corporation's eligibility to apportion adjusted federal income. The corporation is responsible for affirmatively demonstrating to OTTED's satisfaction that it meets the eligibility requirements.

OTTED must acknowledge receipt of the notice, and must approve or deny the application in writing within 45 days after receipt.

After it receives OTTED approval, the corporation may elect, on its tax return, to use the single sales apportionment methodology beginning with the same taxable year when OTTED issued its approval. A corporation must file under the single-factor sales apportionment methodology for 4 years. If the corporation does not renew its election for the single sales method, then it must revert to the traditional methodology in s. 220.15, F.S., (the double-weighted sales methodology), and later reapply to apportion its adjusted federal income pursuant to this section.

In addition to its existing statutory audit authority, DOR may perform any financial and technical review and investigation, including examining the accounts, books, and records of any corporation that opted to use the single sales apportionment methodology to verify that its tax

return correctly computes and apports adjusted federal income and to ensure compliance with ch. 220, F.S.

If a DOR audit, investigation, or examination indicates problems with a corporation's tax returns, OTTED may revoke its decision to qualify the corporation as eligible for the single sales apportionment. OTTED also may order the recalculation of apportionment factors to those applicable under s. 220.15, F.S., if, as the result of a DOR audit, investigation, or examination, it determines that information provided by the offending corporation in its application or other documents was materially false at the time it was made and that an individual acting on behalf of the corporation knew, or should have known, that the information submitted was false.

In such cases, the corporation must pay the additional taxes and interest that may be due, calculated as the difference between the taxes paid under the single sales apportionment and the double-weighted sales apportionment in s. 220.15, F.S. DOR also shall assess the corporation a penalty equal to 100 percent of the additional tax due.

OTTED must immediately notify DOR of its decision to revoke a corporation's eligibility for the single sales apportionment. At that point, the corporation must file an amended return with DOR, or any other such report that OTTED requires by rule, and pay any required tax, interest, and penalty within 60 days after receiving notification from OTTED about the revocation. If the corporation contests the revocation order, it still must file an amended return or other report within 30 days after the revocation order becomes final. A corporation that fails to pay the past tax, interest, and penalty by the due date is subject to the penalties provided in s. 220.803, F.S.⁹

SB 1506 authorizes OTTED and DOR to adopt rules to administer these provisions.

Section 3: Provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ This section provides for an additional 10-percent penalty if the deficiency in tax payments is a result of negligence or intentional disregard of the rules and regulations, or in the case of fraud, a penalty equal to 100 percent of the deficient amount.

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

The Revenue Estimating Conference at its March 25, 2011, meeting adopted by consensus a negative fiscal impact to the state treasury of \$7.6 million in FY 2013-2014, and a negative fiscal impact of \$7.8 million in FY 2014-2015. The estimated impacts were based on the REC's assumption that the required per-taxpayer \$250 million investment is prospective – after the corporation receives OTTED approval.

If SB 1506 is interpreted to mean that an eligible corporation has already made the \$250 million investment in the 2 years prior to seeking OTTED approval – as the sponsor intends – the negative fiscal impact may shift a year earlier, beginning in FY 2012-2013.

B. Private Sector Impact:

Indeterminate, but likely positive.

C. Government Sector Impact:

DOR indicated that SB 1506 would have no fiscal impact on its staffing and operations.

VI. Technical Deficiencies:

DOR has recommended two technical amendments to SB 1506. One would define “qualified investments,” and the other would give OTTED access to confidential tax information about corporations participating in the single-factor sales apportionment methodology.

VII. Related Issues:

SB 1506 specifies that a corporation must maintain at least the same number of employees during the 2-year period it first notifies OTTED of its intent to qualify for the single-factor sales apportionment and when it applies for OTTED's approval to use the apportionment method. This could be interpreted to mean that once a corporation receives that approval, it could lay off employees.

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

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment

Delete line 223

and insert:

(6) Nonbasic services or comparable services offered by any telecommunications company.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment

Delete lines 298 - 301
and insert:

primarily unserved areas by removing economic barriers to entry
~~investments in primarily unserved areas to give consumers a~~
~~choice of more than one broadband Internet service provider.~~



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete line 328.

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

And the title is amended as follows:

Delete lines 23 - 24

and insert:

authorizing the department to adopt rules;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 670 - 815
and insert:

364.16 ~~Connection of lines and transfers;~~ Local
interconnection, unbundling, and resale; ~~telephone number~~
~~portability.~~—

(1) The Legislature finds that the competitive provision of
local exchange service requires appropriate continued regulatory
oversight of carrier-to-carrier relationships in order to
provide for the development of fair and effective competition.



527954

13 (2) It is the intent of the Legislature that in resolving
14 disputes, the commission treat all providers of
15 telecommunications services fairly by preventing anticompetitive
16 behavior, including, but not limited to, predatory pricing.

17 (3) The commission shall, upon request, arbitrate and
18 enforce interconnection agreements pursuant to 47 U.S.C. ss. 251
19 and 252 and the Federal Communications Commission's orders and
20 regulations implementing those sections. The commission has the
21 authority to resolve disputes among carriers concerning
22 violations of this chapter and under the authority conferred by
23 federal law to resolve such disputes, including, but not limited
24 to, federal law addressing resale of services, local
25 interconnection, unbundling, number portability, dialing parity,
26 access to rights-of-way, access to poles and conduits, and
27 reciprocal compensation. However, this section does not confer
28 jurisdiction on the commission for services that are exempt from
29 commission jurisdiction under s. 364.011 or s. 364.013.

30 Additionally, a competitive local exchange telecommunications
31 company is entitled to interconnection with a local exchange
32 telecommunications company to transmit and route voice traffic
33 between both the competitive local exchange telecommunications
34 company and the local exchange telecommunications company
35 regardless of the technology by which the voice traffic is
36 originated by and terminated to an end user. The commission
37 shall afford the competitive local exchange telecommunications
38 company all substantive and procedural rights available to such
39 companies regarding interconnection under the law.

40 (4) A telecommunications company may not knowingly deliver
41 traffic, for which terminating access service charges would



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otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service. Any party having a substantial interest may petition the commission for an investigation of any suspected violation of this subsection. If a telecommunications company knowingly violates this subsection, the commission has jurisdiction to arbitrate bona fide complaints arising from the requirements of this subsection and shall, upon such complaint, have access to all relevant customer records and accounts of any telecommunications company.

(5) The commission shall adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service. Such rules shall be consistent with the Telecommunications Act of 1996, provide for specific verification methodologies, provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge, allow for a subscriber's change to be considered valid if verification was performed consistent with commission rules, provide remedies for violations of the rules, and allow for the imposition of other penalties available under this chapter. The commission shall resolve on an expedited basis any complaints of anticompetitive behavior concerning a local preferred carrier freeze. The telecommunications company that is asserting the existence of a local preferred carrier freeze, which is the subject of a complaint, has the burden of proving through competent evidence that the subscriber did in fact request the freeze.

(6) Upon petition, the commission may conduct a limited or expedited proceeding to consider and act upon any matter under



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71 this section. The commission shall determine the issues to be
72 considered during such a proceeding and may grant or deny any
73 request to expand the scope of the proceeding to include other
74 matters. The commission shall implement an expedited process to
75 facilitate the quick resolution of disputes between
76 telecommunications companies. The process implemented by the
77 commission shall, to the greatest extent feasible, minimize the
78 time necessary to reach a decision on a dispute. The commission
79 may limit the use of the expedited process based on the number
80 of parties, the number of issues, or the complexity of the
81 issues. For any proceeding conducted pursuant to the expedited
82 process, the commission shall make its determination within 120
83 days after a petition is filed or a motion is made. The
84 commission shall adopt rules to administer this subsection.

85 ~~(1) Whenever the commission finds that connections between~~
86 ~~any two or more local exchange telecommunications companies,~~
87 ~~whose lines form a continuous line of communication or could be~~
88 ~~made to do so by the construction and maintenance of suitable~~
89 ~~connections at common points, can reasonably be made and~~
90 ~~efficient service obtained, and that such connections are~~
91 ~~necessary, the commission may require such connections to be~~
92 ~~made, may require that telecommunications services be~~
93 ~~transferred, and may prescribe through lines and joint rates and~~
94 ~~charges to be made, used, observed, and in force in the future~~
95 ~~and fix the rates and charges by order to be served upon the~~
96 ~~company or companies affected.~~

97 ~~(2) Each competitive local exchange telecommunications~~
98 ~~company shall provide access to, and interconnection with, its~~
99 ~~telecommunications services to any other provider of local~~



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~~exchange telecommunications services requesting such access and
interconnection at nondiscriminatory prices, terms, and
conditions. If the parties are unable to negotiate mutually
acceptable prices, terms, and conditions after 60 days, either
party may petition the commission and the commission shall have
120 days to make a determination after proceeding as required by
s. 364.162(2) pertaining to interconnection services.~~

~~(3) Each local exchange telecommunications company shall
provide access to, and interconnection with, its
telecommunications facilities to any other provider of local
exchange telecommunications services requesting such access and
interconnection at nondiscriminatory prices, rates, terms, and
conditions established by the procedures set forth in s.
364.162.~~

~~(a) No local exchange telecommunications company or
competitive local exchange telecommunications company shall
knowingly deliver traffic, for which terminating access service
charges would otherwise apply, through a local interconnection
arrangement without paying the appropriate charges for such
terminating access service.~~

~~(b) Any party with a substantial interest may petition the
commission for an investigation of any suspected violation of
paragraph (a). In the event any certificated local exchange
service provider knowingly violates paragraph (a), the
commission shall have jurisdiction to arbitrate bona fide
complaints arising from the requirements of this subsection and
shall, upon such complaint, have access to all relevant customer
records and accounts of any telecommunications company.~~

~~(7)(4)~~ In order to ensure assure that consumers have access



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129 to different local exchange service providers without being
130 disadvantaged, deterred, or inconvenienced by having to give up
131 the consumer's existing local telephone number, the commission
132 must make sure that all providers of local exchange services
133 ~~must~~ have access to local telephone numbering resources and
134 assignments on equitable terms that include a recognition of the
135 scarcity of such resources and that are in accordance with
136 national assignment guidelines. ~~Each local exchange provider,~~
137 ~~except small local exchange telecommunications companies under~~
138 ~~rate of return regulation, shall provide a temporary means of~~
139 ~~achieving telephone number portability. The parties, under the~~
140 ~~direction of the commission, shall set up a number portability~~
141 ~~standards group by no later than September 1, 1995, for the~~
142 ~~purposes of investigation and development of appropriate~~
143 ~~parameters, costs, and standards for number portability. If the~~
144 ~~parties are unable to successfully negotiate the prices, terms,~~
145 ~~and conditions of a temporary number portability solution, the~~
146 ~~commission shall establish a temporary number portability~~
147 ~~solution by no later than January 1, 1996. Each local exchange~~
148 ~~service provider shall make necessary modifications to allow~~
149 ~~permanent portability of local telephone numbers between~~
150 ~~certificated providers of local exchange service as soon as~~
151 ~~reasonably possible after the development of national standards.~~
152 ~~The parties shall negotiate the prices, terms, and conditions~~
153 ~~for permanent telephone number portability arrangements. In the~~
154 ~~event the parties are unable to satisfactorily negotiate the~~
155 ~~prices, terms, and conditions, either party may petition the~~
156 ~~commission and the commission shall, after opportunity for a~~
157 ~~hearing, set the rates, terms, and conditions. The prices and~~



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~~rates shall not be below cost. Number portability between
different certificated providers of local exchange service at
the same location shall be provided temporarily no later than
January 1, 1996.~~

~~(8)(5)~~ When requested, each certificated telecommunications

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

And the title is amended as follows:

Delete lines 51 - 62
and insert:

facilities; amending s. 364.16, F.S., relating to
local interconnection, unbundling, and resale of
telecommunication services; providing legislative
intent; requiring the Public Service Commission to,
upon request, arbitrate and enforce interconnection
agreements; providing that certain services are exempt
from the commission jurisdiction; providing that a
competitive local exchange telecommunications company
is entitled to interconnection with a local exchange
telecommunications company for certain purposes;
prohibiting a telecommunications company from
knowingly delivering traffic for which terminating
access service charges would otherwise apply;
authorizing any party having a substantial interest to
petition the commission for an investigation;
requiring the commission to adopt rules to prevent the
unauthorized changing of a subscriber's



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187 telecommunications service; requiring the commission
188 to conduct an expedited proceeding to resolve
189 disputes; providing that the telecommunications
190 company that asserts the existence of a local
191 preferred carrier freeze has a certain burden of
192 proof; removing obsolete provisions relating to local
193 exchange telecommunications companies; repealing ss.
194 364.161



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment

Delete lines 912 - 913
and insert:

(f) Employee personnel information unrelated to
compensation, duties, qualifications, or responsibilities.

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 Commerce and Tourism Committee

BILL: CS/SB 1524

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Simmons

SUBJECT: Telecommunications

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Fav/CS
2.	Hrdlicka	Cooper	CM	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

Speaking broadly, the effect of the bill is to:

- Complete retail deregulation of wireline telecommunication services by repealing the statutes that:
 - require price regulation;
 - require companies to provide a flat-rate pricing option for basic local telecommunications service;
 - prohibit charging any price other than that in the scheduled rate tariff; and
 - authorize the Public Service Commission to engage in specified consumer protection activities.
- Maintain the role of the Public Service Commission in resolving wholesale disputes between service providers.

The bill substantially amends the following sections of the Florida Statutes: 364.01, 364.011, 364.012, 364.0135, 364.02, 364.04, 364.10, 364.16, 364.163, 364.183, 364.33, 364.335, 364.3375, 364.385, 364.386, 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5).

It also repeals the following sections of the Florida Statutes: 364.015, 364.025, 364.0251, 364.252, 364.051, 364.052, 364.057, 364.058, 364.059, 364.06, 364.063, 364.07, 364.08, 364.15, 364.161, 364.162, 364.185, 364.19, 364.27, 364.337, 364.3376, 364.3381, 364.3382, 364.339, 364.345, 364.37, 364.501, 364.503, 364.506, 364.507, 364.508, 364.515, 364.516, 364.601, 364.602, 364.603, and 364.604.

II. Present Situation:

Chapter 364, F.S., provides for regulation of wireline telecommunications companies. Deregulation of the industry began in Florida in 1995. At that time, wireline voice communication services were only being offered by the incumbent local exchange companies. New providers could enter the market by three methods: a purchase and resale of a portion of an incumbent's systems and services; a lease of some of these systems; or construction of their own systems. With deregulation, various statutory protections were enacted for consumers and new market entrants, including requirements for a universal service fund, the carrier-of-last-resort obligation of each incumbent, and a rate structure that encourages competition while protecting all parties. As the market developed, changes were made to these and other statutes to provide further encouragement for competition and to continue or expand protections.

Still, little competition developed until improvements in technology allowed the transmission of different types of communications services (voice, video, and data) on one delivery system. As these technologies converged, service providers began to offer bundled services, providing all three types of communications services to a customer on one network, with one contract and one price. This became the standard industry practice for providers that had traditionally provided only one form of communication service, either voice, video (cable), or data (internet). With this convergence, additional statutory changes were necessary, notably further deregulation of wireline voice communication and changes to its rate structure, the creation of a state system for obtaining a franchise for video services to replace local franchises, and the deletion or repeal of provisions that became obsolete or unnecessary.

III. Effect of Proposed Changes:

Speaking broadly, the effect of the bill is to:

- Complete retail deregulation of wireline telecommunication services by repealing the statutes that: require price regulation; require companies to provide a flat-rate pricing option for basic local telecommunications service; prohibit charging any price other than that in the scheduled rate tariff; and authorize the PSC to engage in specified consumer protection activities.
- Maintain the role of the PSC in resolving wholesale disputes between service providers.

Section 1 names the act the "Regulatory Reform Act."

Section 2 amends s. 364.01, F.S., to delete language directing the Public Service Commission (PSC or commission) to exercise its exclusive jurisdiction to:

- Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.

- Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.
- Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.
- Promote competition by encouraging innovation and investment in telecommunications markets and by allowing a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight.
- Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints.
- Eliminate any rules or regulations which will delay or impair the transition to competition.
- Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.
- Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.
- Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

Section 3 amends s. 364.011, F.S., which provides exclusions from PSC jurisdiction. The bill adds to the list of exempt services both basic and nonbasic services. Basic service is voice-grade, single-line, flat-rate residential local exchange service that provides dial tone, local usage necessary to place unlimited calls within a local exchange area, dual-tone multifrequency dialing, and access to the following: emergency services such as “911,” all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term includes any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.¹ Nonbasic service is any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement, or a network access service. Any combination of basic service along with a nonbasic service or an unregulated service is nonbasic service.²

Section 4 amends s. 364.012, F.S., to change the term local exchange carrier to local exchange telecommunications company, presumably to distinguish telecommunications companies from other voice service providers.

Section 5 amends s. 364.0135, F.S., to create a definition for the term “sustainable adoption” of broadband services, meaning the ability for communications service providers to offer broadband

¹ s. 364.02(1), F.S.

² s. 364.02(10), F.S.

services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

Section 6 repeals s. 364.015, F.S., which authorizes the PSC to petition the circuit court for an injunction against violations of commission orders or rules in connection with the impairment of a telecommunications company's operations or service.

Section 7 amends s. 364.02, F.S., on definitions to:

- delete from the list of services included in the definition of "basic local telecommunications service" the providing an alphabetical directory listing;
- delete the definitions of the term "monopoly service";
- delete the existing definition of the term "VoIP" and replace it with a detailed definition of a system that enables real-time, two-way voice communications using Internet Protocol, using a broadband connection, and permitting users generally to place and receive calls on the public switched telephone network; and
- exclude from the definition of "telecommunications company" an operator services provider.

Section 8 repeals s. 364.025, F.S., which provides for universal service, defined as "an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas." To provide this level of service, each local exchange telecommunications company³ was required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory until January 1, 2009. This "carrier-of-last-resort" obligation has now expired by the terms of the statute.

Section 9 repeals s. 364.0251, F.S., which requires, as a part of deregulation, that by January 1, 1996, all companies providing local exchange telecommunications services provide information on competition to their customers in the form of a bill insert.

Section 10 repeals s. 364.252, F.S., which requires the PSC to inform consumers of their rights as customers of competitive telecommunications services and to assist customers in resolving any billing and service disputes that customers are unable to resolve directly with the company. The PSC is authorized to require all telecommunications companies providing local or long distance telecommunications services to develop and provide information to customers, including informing consumers concerning the availability of the Lifeline and Link-Up Programs for low-income households and alerting consumers to how they can avoid having their service changed or unauthorized charges added to their telephone bills.

Section 11 amends s. 364.04, F.S., on rate schedules. The current statute requires every telecommunications company to publish its rates and tolls through electronic or physical means. The bill retains this requirement and adds that the PSC has no jurisdiction over the content, form,

³ The term "local exchange telecommunications company" is defined to mean any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995. s. 364.02(8), F.S. Basically, this means all wireline telephone companies certificated, or authorized to act in this state, prior to deregulation.

or format of the schedule. The bill also provides that the section does not apply to rates, terms, and conditions established pursuant to federal law on interconnections. Finally, it provides that chapter 364 does not prohibit a telecommunications company from: contracting for different rates; offering services not included in the published schedule; or meeting competitive offerings.

Section 12 repeals s. 364.051, F.S., which provides for price regulation. The current statute provides that all local exchange telecommunications companies are subject to this price regulation, notwithstanding any other provisions of the chapter.

Basic Service

The statute requires a flat-rate pricing option for basic local telecommunications service. A company may, with 30 days' notice, adjust its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent, upon specified conditions being met. These conditions are: 1) if it is determined that the level of competition justifies the elimination of price caps in an exchange served by a company with less than 3 million basic local telecommunications service access lines in service, or 2) at the end of 5 years for any company. If any company, after January 1, 2001, believes that the level of competition justifies the elimination of any form of price regulation, the company may petition the Legislature for that elimination.

In addition to this method for increasing prices, any company that believes circumstances have changed substantially enough to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase. The commission may grant the petition only after a compelling showing of changed circumstances.

Nonbasic service

Each company may set or change the rate for each of its nonbasic services on 1 day's notice. The price increase for any nonbasic service category cannot not exceed 6 percent within a 12-month period until there is another entity providing local telecommunications service in that exchange area; at that time, the price for any nonbasic service category may be increased in an amount not to exceed 10 percent within a 12-month period, and the rate is presumptively valid. However, the price for any service that was treated as basic service before July 1, 2009, cannot be increased by more than the amount allowed for basic service.

The statute also provides the commission with continuing regulatory oversight of nonbasic services for purposes of preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The price charged to a consumer for a nonbasic service must cover the direct costs of providing the service.

Section 13 repeals s. 364.052, F.S., which provides for regulation of small local exchange telecommunications companies, which is defined as a local exchange telecommunications company certificated by the commission prior to July 1, 1995, which had fewer than 100,000 access lines in service on that date.

The statute requires the commission to adopt streamlined procedures for regulating these companies that minimize the burdens of regulation with regard to audits, investigations, service standards, cost studies, reports, and other matters. The commission can establish only those procedures that are cost-justified and are in the public interest so that universal service may be promoted.

These companies remained under rate of return regulation; however, the statute provides that a company may, at any time after January 1, 1996, elect to be subject to the price regulation statute discussed above, s. 364.051, F.S. (also repealed by the bill).

Any competitive local exchange telecommunications company competing within the territory of any small local exchange telecommunications company must do so on an exchange-wide basis for the provision of flat-rated, switched residential and business local exchange telecommunications services in all exchanges in which they elect to serve, unless the commission determines otherwise. However, if a small local exchange telecommunications company elects to be subject to price regulation, or if it provides cable television programming services, a certificated competitive local exchange company may provide services within the territory of the electing company.

Section 14 repeals s. 364.057, F.S., which allows the commission to approve experimental or transitional rates it determines to be in the public interest for any telecommunications company to test marketing strategies.

Section 15 repeals s. 364.058, F.S., which authorizes the commission to conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction, upon petition or its own motion. The section also requires the commission to implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies. The process must, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The commission may limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues.

Section 16 repeals s. 364.059, F.S., which provides procedures for seeking a stay of the effective date of a price reduction for a basic local telecommunications service by a company that has elected to have its basic local telecommunications services treated the same as its nonbasic services.

Section 17 repeals s. 364.06, F.S., which provides that when companies have agreed to joint rates, tolls, contracts, or charges, one company must file the rate tariff and if each of the others files sufficient evidence of concurrence, they do not have to file copies of the rate tariff.

Section 18 repeals s. 364.063, F.S., which requires that the commission put in writing any order adjusting general increases or reductions of the rates of a telecommunications company within 20 days after the official vote of the commission. The PSC must also, within that 20-day period, mail a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment.

Section 19 repeals s. 364.07, F.S., which requires every telecommunications company to file with the commission a copy of any contract with any other telecommunications company or with any other entity relating in any way to the construction, maintenance, or use of a telecommunications facility or service by, or rates and charges over and upon, any such telecommunications facility. The statute also authorizes the PSC to review, and disapprove, contracts for joint provision of intrastate interexchange service.

Section 20 repeals s. 364.08, F.S., which makes it unlawful for a telecommunications company to charge any compensation other than the charge specified in its schedule on file or otherwise published and in effect at that time.

Section 21 amends s. 364.10, F.S., to delete an existing prohibition against undue advantage or preference. It also deletes an existing prohibition against increasing the residential basic local telecommunications service rate, as authorized by s. 364.164, F.S., of any local exchange telecommunications company customer receiving Lifeline benefits until: the local exchange telecommunications company reaches parity as defined in s. 364.164(5), F.S., until the customer no longer qualifies for the Lifeline benefits, or unless otherwise determined by the commission upon petition by a local exchange telecommunications company. Section 364.164, F.S., was repealed in 2007.

Section 22 repeals s. 364.15, F.S., which authorizes the PSC to order that repairs, improvements, changes, additions, or extensions be made in the manner to be specified in the order when it finds that these repairs or improvements to, or changes in, any telecommunications facility ought reasonably to be made, or that any additions or extensions should reasonably be made to any telecommunications facility, in order to promote the security or convenience of the public or employees or in order to secure adequate service or facilities for basic local telecommunications services.

Section 23 amends s. 364.16, F.S., on connection of lines and number portability.

Current law

The statute currently authorizes the PSC to require line connections and transfer of telecommunications service when it finds that such connections between any two or more local exchange telecommunications companies can reasonably be made and efficient service obtained and that such connections are necessary.

Each competitive local exchange telecommunications company must provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting access and interconnection at nondiscriminatory prices, terms, and conditions. If the parties are unable to negotiate mutually acceptable prices, terms, and conditions after 60 days, either party may petition the PSC to determine the prices or terms. Each local exchange telecommunications company must provide access to, and interconnection with, its telecommunications facilities to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, rates, terms, and conditions established by the procedures set forth in s. 364.162.

The statute also requires that temporary means of achieving telephone number portability be established no later than January 1, 1996. Each local exchange service provider must make necessary modifications to allow permanent portability of local telephone numbers between certificated providers of local exchange service as soon as reasonably possible after the development of national standards.

Proposed changes

The bill preserves the current requirement that all providers have access to local telephone numbering resources and assignments on equitable terms.

It deletes all other provisions on access, except to poles, and replaces them with the following. Upon request, the PSC is required to arbitrate and enforce interconnection agreements pursuant to 47 U.S.C. ss. 251 and 252 and the Federal Communications Commission's orders and regulations implementing those sections. The PSC has the authority to resolve disputes among carriers concerning violations of this chapter and under the authority conferred by federal law to resolve such disputes, including, but not limited to, federal law addressing resale of services, number portability, dialing parity, access to rights of way, access to poles and conduits, and reciprocal compensation. However, this section does not confer jurisdiction on the commission for matters that are exempt from commission jurisdiction under ss. 364.011 and 364.013, F.S.

The bill prohibits a telecommunications company from knowingly delivering traffic for which terminating access service charges would otherwise apply through a local interconnection arrangement without paying the appropriate charges for the terminating access service. Any party having a substantial interest may petition the commission for an investigation of any suspected violation of this subsection. If any telecommunications company knowingly violates this subsection, the commission has jurisdiction to arbitrate bona fide complaints arising from the requirements of this subsection and shall, upon such complaint, have access to all relevant customer records and accounts of any telecommunications company.

The PSC is directed to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service which must: be consistent with the Telecommunications Act of 1996; provide for specific verification methodologies; provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge; allow for a subscriber's change to be considered valid if verification was performed consistent with commission rules; provide remedies for violations of the rules; and allow for the imposition of other penalties available under this chapter. The commission must resolve on an expedited basis any complaints of anticompetitive behavior concerning a local preferred carrier freeze. The telecommunications company that is asserting the existence of a local preferred carrier freeze has the burden of proving through competent evidence that the subscriber did in fact request the freeze.

Upon petition, the commission may conduct a limited or expedited proceeding to consider and act upon any matter under this section. The commission must determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters. The commission must implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies which must, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The

commission may limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues. For any proceeding conducted pursuant to the expedited process, the commission is required to make its determination within 120 days after a petition is filed or a motion is made. The commission must adopt rules to administer these requirements.

Section 24 repeals s. 364.161, F.S., which requires each local exchange telecommunications company, upon request, to unbundle all of its network elements, the network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities, and sell those elements for resale to the extent technically and economically feasible. Under the bill, this will now be addressed in s. 364.16, F.S.

Section 25 repeals s. 364.162, F.S., which allows a competitive local exchange telecommunications company 60 days from the date it is certificated to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities. Under the bill, this will now be addressed in s. 364.16, F.S.

Section 26 amends s. 364.163, F.S., to make conforming changes.

Section 27 amends s. 364.183, F.S., to delete existing PSC authority to have access to certain types of records of a local exchange telecommunications company's affiliated companies, including its parent company, and to require a telecommunications company to file records, reports or other data and to retain such information for a designated period of time.

Section 28 repeals s. 364.185, F.S., which authorizes the PSC to, during all reasonable hours, enter upon any premises occupied by any telecommunications company and set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations, and tests.

Section 29 repeals s. 364.19, F.S., which authorizes the PSC to regulate the terms of telecommunications service contracts between telecommunications companies and their patrons through use of reasonable rules.

Section 30 repeals s. 364.27, F.S., which requires the PSC to investigate all interstate rates, fares, and charges for or in relation to the transmission of messages or conversations where any act relating to the transmission of messages or conversations takes place within this state and when it appears to violate The Communications Act of 1934.

Section 31 amends s. 364.33, F.S., on certificates of necessity. Currently, except for a transfer of a certificate of necessity from one person to another or to the parent or affiliate of a certificated person as provided in this section, a person may not begin the construction or operation of any telecommunications facility for the purpose of providing telecommunications services to the public or acquire ownership or control in any facility in any manner without prior PSC approval. A certificate of necessity or control thereof may be transferred from a person holding a certificate, its parent or an affiliate to another person holding a certificate, its parent or an

affiliate, and a person holding a certificate, its parent or an affiliate may acquire ownership or control of a telecommunications facility through the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership of a person holding a certificate without prior approval of the commission by giving 60 days' written notice of the transfer or change of control to the commission and affected customers.

The bill changes this to prohibit any person from providing telecommunications services to the public without a certificate of necessity or a certificate of authority. It also prohibits the PSC from issuing any new certificates after July 1, 2011, but provides that existing certificates remain valid. A certificate may be transferred to the holder's parent company or an affiliate or another person holding a certificate of necessity or authority, its parent company, or an affiliate without prior approval of the commission by giving written notice of the transfer to the commission within 60 days after the completion of the transfer. The transferee assumes the rights and obligations conferred by the certificate.

Section 32 amends s. 364.335, F.S., on application for a certificate of necessity. Current law requires each applicant for a certificate to:

- Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, a detailed inquiry into the territory and facilities involved, and a detailed inquiry into the existence of service from other sources within geographical proximity to the territory applied for.
- File with the commission schedules showing all rates for service of every kind furnished by it and all rules and contracts relating to such service.
- File the application fee required by the commission in an amount not to exceed \$500.
- Submit an affidavit that the applicant has given proper notice of its application.

If the commission grants the requested certificate, any person who would be substantially affected by the requested certification may, within 21 days after the granting of such certificate, file a written objection requesting a hearing. Also, the commission may hold a hearing on its own motion to determine whether the grant of a certificate is in the public interest.

The bill deletes all of the current language about the information an applicant is to provide the commission and replaces it with:

- The applicant's official name and, if different, any name under which the applicant will do business.
- The street address of the principal place of business of the applicant.
- The federal employer identification number or the Department of State's document number.
- The name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person for the applicant to whom questions or concerns may be addressed.
- Information demonstrating the applicant's managerial, technical, and financial ability to provide telecommunications service, including an attestation to the accuracy of the information provided.

It requires that the commission grant a certificate of authority to provide telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served. The applicant must ensure

continued compliance with applicable business formation, registration, and taxation provisions of law.

The bill also deletes all current provisions on hearings.

Section 33 repeals s. 364.337, F.S., which provides for certification of a competitive local exchange telecommunications company prior to January 1, 1996. It also requires that a competitive local exchange telecommunications company provide a flat-rate pricing option for basic local telecommunications services and that the service include access to operator services, “911” services, and relay services for the hearing impaired.

Section 34 amends s. 364.3375, F.S. to delete existing a provision allowing a pay telephone provider to charge a rate equivalent to the local coin rate of the local exchange telecommunications company and a provision prohibiting a pay telephone provider from obtaining services from an operator service provider unless the operator service provider has obtained a certificate of public convenience and necessity.

Section 35 repeals s. 364.3376, F.S., which provides for operator services. It prohibits providing operator services without first obtaining a certificate of public convenience and necessity. All intrastate operator service providers are subject to the jurisdiction of the PSC, must render services pursuant to price schedules, and must meet prescribed requirements.

Section 36 repeals s. 364.3381, F.S., which prohibits cross-subsidization, the selling of nonbasic telecommunications service at below cost by use of subsidization from rates paid by customers of basic services.

Section 37 repeals s. 364.3382, F.S., which requires a local exchange telecommunications company to advise each residential customer of the least-cost service available to a residential customer when the customer initially requests service and to annually advise each residential customer of the price of each service option selected by that customer.

Section 38 repeals s. 364.339, F.S., which provides the PSC with exclusive jurisdiction to authorize the provision of any shared tenant service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company.

Section 39 repeals s. 364.345, F.S., which requires each telecommunications company to provide adequate and efficient service to the territory described in its certificate within a reasonable time. It also prohibits, in general, a telecommunications company from selling, assigning, or transferring its certificate or any portion thereof without a determination by the commission that the proposed sale, assignment, or transfer is in the public interest and the approval of the commission.

Section 40 repeals s. 364.37, F.S., which authorizes the PSC to make any order and prescribe any terms and conditions that are just and reasonable if any person, in constructing or extending a telecommunications facility, unreasonably interferes or is about to unreasonably interfere with

any telecommunications facility or service of any other person, or if a controversy arises between any two or more persons with respect to the territory professed to be served by each.

Section 41 amends s. 364.385, F.S., to delete all references to the effects of the original deregulation act on certificates, rates, proceedings, and orders prior to January 1, 1996, the effective date of that act.

Section 42 amends s. 364.386, F.S., to make conforming changes.

Section 43 repeals s. 364.501, F.S., which requires all telecommunications companies with underground fiber optic facilities to operate their own, or be a member of a, one-call cable location notification system providing telephone numbers which are to be called by excavating contractors and the general public for the purpose of notifying the telecommunications company of such person's intent to engage in excavating or any other similar work.

Section 44 repeals s. 364.503, F.S., which requires a local exchange telecommunications company or a cable television company which is merging with or acquiring an ownership interest of greater than 5 percent in the other type of company to give 60 days' notice to the Florida Public Service Commission and the Department of Legal Affairs of the Office of the Attorney General.

Sections 45-49 repeal ss. 364.506-.516, F.S.

Section 364.506, F.S., titles these sections, which make up Part II of chapter 364, the Education Facilities Infrastructure Improvement Act.

Section 364.507, F.S., provides legislative findings and intent.

Section 364.508, F.S., provides definitions.

Section 364.515, F.S., provides for funding of advanced telecommunications services by submitting a technology-needs request to the Department of Management Services no later than July 1, 1997.

Section 364.516, F.S., provides for penalties.

Sections 50-53 repeal ss. 364.601-.604, F.S.

Section 364.601, F.S., titles these sections, which make up Part III of Chapter 364, the Telecommunications Consumer Protection Act.

Section 364.602, F.S., provides definitions.

Section 364.603, F.S., requires the PSC to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service.

Section 364.604, F.S., establishes requirements for the content of a customer's bill; provides that a customer is not liable for any charges for telecommunications or information services that the customer did not order or that were not provided; requires every billing party to provide a free blocking option to a customer to block 900 or 976 telephone calls; and prohibits a billing party from disconnecting a customer's Lifeline local service if the charges, taxes, and fees applicable to basic local exchange telecommunications service are paid.

Sections 54-61 amend ss. 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5), F.S., to conform statutory cross-references.

Section 62 provides an effective date of July 1, 2011.

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:

Wireline telecommunication customers will no longer be protected by PSC economic regulation, but may benefit from greater competition among intermodal service providers.

They also will no longer have a statutory right to a flat-rate pricing option for basic local telecommunications service and may be forced to choose a more expensive option, more extensive option, or one that is both.

C. Government Sector Impact:

Section 364.336, F.S., provides for telecommunications regulatory assessment fees (RAF). Each telecommunications company licensed or operating under chapter 364 must pay to the PSC every 6 months a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business. The commission is required to establish and assess a minimum fee in an amount up to \$1,000. The minimum amount may vary depending on the type of service provided by the telecommunications

company, and must, to the extent practicable, be related to the cost of regulating that type of company. Given that it will no longer be engaged in economic regulation of the retail wireline telecommunications industry or in related consumer protection, the PSC will have to reassess these RAF fees. Given the remaining level of authority, the appropriate amount for RAF fees is uncertain; however, absent sufficient fees, a source for funding the wholesale dispute resolution duties is uncertain.

Any other fiscal impacts on the PSC are unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Communications, Energy, and Public Utilities on March 21, 2011:

The committee substitute: retains PSC authority to recover travel costs; retains definitions relating to operator services; and retains the current requirement that all providers have access to local telephone numbering resources and assignments on equitable terms.

- B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (u) of subsection (1) of section
319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of
identity of motor vehicle or mobile home; salvage.—

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

(u) "Secondary metals recycler" means secondary metals
recycler as defined in s. 538.18(11) ~~s. 538.18(8)~~.

Section 2. Paragraph (j) is added to subsection (1) of



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section 538.03, Florida Statutes, to read:

538.03 Definitions; applicability.—

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

(j) "Appropriate law enforcement official" means the sheriff of the county in which a secondhand dealer is located and, in the case of a secondhand dealer located within a municipality, the police chief of the municipality in which the secondhand dealer is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality headed by that sheriff or police chief. This paragraph does not limit the power and responsibilities of the sheriff.

Section 3. Subsection (1) of section 538.04, Florida Statutes, is amended to read:

538.04 Recordkeeping requirements; penalties.—

(1) Secondhand dealers shall complete a secondhand dealers transaction form at the time of the actual transaction. A secondhand dealer shall maintain a copy of a completed transaction form on the registered premises for at least 1 year after the date of the transaction. However, the secondhand dealer shall maintain a copy of the transaction form for not less than 3 years. Unless other arrangements have been agreed upon by the secondhand dealer and the appropriate law enforcement agency, the secondhand dealer shall, within 24 hours after the acquisition of any secondhand goods, deliver to the appropriate law enforcement official ~~police department of the municipality where the goods were acquired or, if the goods were acquired outside of a municipality, to the sheriff's department~~



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~~of the county where the goods were acquired,~~ a record of the transaction on a form approved by the Department of Law Enforcement. Such record shall contain:

(a) The time, date, and place of the transaction.

(b) A complete and accurate description of the goods acquired, including the following information, if applicable:

1. Brand name.

2. Model number.

3. Manufacturer's serial number.

4. Size.

5. Color, as apparent to the untrained eye.

6. Precious metal type, weight, and content if known.

7. Gemstone description, including the number of stones, if applicable.

8. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.

9. Any other unique identifying marks, numbers, or letters.

(c) A description of the person from whom the goods were acquired, including:

1. Full name, current residential address, workplace, and home and work phone numbers.

2. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.

3. The right thumbprint, free of smudges and smears, of the person from whom the goods were acquired.

(d) Any other information required by the form approved by the Department of Law Enforcement.

Section 4. Section 538.18, Florida Statutes, is amended to read:



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

(1) "Appropriate law enforcement official" means the sheriff of the county in which a secondary metals recycler is located and, in the case of a secondary metals recycler located within a municipality, the police chief of the municipality in which the secondary metals recycler is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality headed by that sheriff or police chief. This subsection does not limit the power and responsibilities of the sheriff.

(2)~~(9)~~ "Department" means the Department of Revenue.

(3)~~(1)~~ "Ferrous metals" means any metals containing significant quantities of iron or steel.

(4)~~(2)~~ "Fixed location" means any site occupied by a secondary metals recycler as owner of the site or as lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

(5)~~(3)~~ "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency.

(6)~~(4)~~ "Nonferrous metals" means metals not containing significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof, excluding precious metals subject to regulation under part I.

(7)~~(5)~~ "Personal identification card" means any government-



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issued photographic identification card.

(8)~~(6)~~ "Purchase transaction" means a transaction in which a secondary metals recycler gives consideration for regulated metals property.

(9)~~(7)~~ "Regulated metals property" means any item composed primarily of any nonferrous metals. The term does, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers; however, the term includes ~~shall include~~ stainless steel beer kegs.

(10) "Restricted regulated metals property" means any regulated metals property listed in s. 538.26(6)(b), the sale of which is restricted as provided in s. 538.26(6)(a).

(11)~~(8)~~ "Secondary metals recycler" means any person who:

(a) Is engaged, from a fixed location ~~or otherwise~~, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

(b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

(12) "Utility" means a person, firm, corporation,



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association, or political subdivision, whether private,
municipal, county, or cooperative, which is engaged in the sale,
generation, provision, or delivery of gas, electricity, heat,
water, oil, sewer service, or telephone, telegraph, radio,
communications, or telecommunications service.

Section 5. Section 538.19, Florida Statutes, is amended to read:

538.19 Records required; limitation of liability.—

(1) A secondary metals recycler shall complete a
transaction form at the time of the actual transaction. Unless
other arrangements have been agreed upon, the secondary metals
recycler shall, within 24 hours after acquiring the regulated
metals, deliver to the appropriate law enforcement official a
record of the transaction on a form approved by the Department
of Law Enforcement. The recycler shall also maintain a legible
record of all purchase transactions to which the ~~such~~ secondary
metals recycler is a party.

(2) The following information must be maintained on the ~~a~~
form approved by the Department of Law Enforcement for each
purchase transaction:

(a) The name and address of the secondary metals recycler.

(b) The name, initials, or other identification of the
individual entering the information on the ticket.

(c) The date and time of the transaction.

(d) The weight, quantity, or volume, and a description of
the type of regulated metals property purchased in a purchase
transaction.

(e) The amount of consideration given in a purchase
transaction for the regulated metals property.



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(f) A signed statement from the person delivering the regulated metals property stating that she or he is the rightful owner of, or is entitled to sell, the regulated metals property being sold. If the purchase involves a stainless steel beer keg, the seller must provide written documentation from the manufacturer that the seller is the owner of the stainless steel beer keg or is an employee or agent of the manufacturer.

(g) The distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler.

(h) A description of the person from whom the goods were acquired, including:

1. Full name, current residential address, workplace, and home and work phone numbers.

2. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.

3. The right thumbprint, free of smudges and smears.

4. Vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property.

5. Any other information required by the form approved by the Department of Law Enforcement.

(i) A photograph, videotape, or digital image of the regulated metals being sold.

(j) A photograph, videotape, or similar likeness of the person receiving consideration in which such person's facial features are clearly visible.

(3) Any secondary metals recycler may, with the approval of the appropriate law enforcement official, use ~~that maintains~~ an



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electronic database containing the information required in
~~subsection (2) paragraph (2)(h), along with an oath of ownership~~
~~with a signature of the seller of the secondary metals being~~
~~purchased by the secondary metals recycler and a right~~
~~thumbprint that has no smudges and smears on the oath of~~
~~ownership for each purchase transaction, shall be exempt from~~
~~the records requirement of paragraph (2)(h).~~ A secondary metals
recycler complies with the requirements of this section if it
maintains an electronic database containing the information
required by subsection (2) ~~paragraph (2)(h)~~ as long as the
electronic information required by subsection (2) ~~paragraph~~
~~(2)(h)~~, along with an electronic oath of ownership with an
electronic signature of the seller of the secondary metals being
purchased by the secondary metals recyclers and an electronic
image of the seller's right thumbprint that has no smudges and
smears, can be downloaded onto a paper form in the image of the
form approved by the Department of Law Enforcement as provided
in subsection (2).

(4) If an appropriate law enforcement official supplies the
software and the secondary metals recycler has the computer
ability, the recycler shall electronically transmit regulated
metals transaction records required by this section. If a
recycler does not have such ability, the appropriate law
enforcement official may provide the recycler with a computer
and necessary equipment to electronically transmit such records.
The appropriate law enforcement official shall retain ownership
of the computer, unless otherwise agreed upon, and the recycler
shall maintain the computer in good working order, ordinary wear
and tear excepted. A recycler who transmits such records



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electronically is not required to also provide the original or paper copies of the forms to the appropriate law enforcement official. However, such official may, for purposes of a criminal investigation, require the recycler to provide the original of a transaction form that has been electronically transferred within 24 hours after receipt of the request.

(5)~~(4)~~ A secondary metals recycler shall maintain or cause to be maintained the information required by this section for not less than 2 ~~5~~ years from the date of the purchase transaction.

(6)~~(5)~~ ~~If a purchase transaction involves the transfer of regulated metals property from~~ A secondary metals recycler registered with the department who purchases a motor vehicle from a licensed salvage motor vehicle dealer as defined in s. 320.27 or from ~~to~~ another secondary metals recycler registered with the department and who uses a mechanical crusher to convert the vehicle to scrap metal must obtain a signed statement from the seller stating that the seller has surrendered the vehicle's certificate of title to the Department of Highway Safety and Motor Vehicles as provided in s. 319.30 or has otherwise complied with the titling requirements provided by law for conversion of the vehicle to scrap metal. A, ~~the~~ secondary metals recycler is not liable for the seller's failure to comply with the titling requirements provided by law for conversion of a motor vehicle to scrap metal if the secondary metals recycler obtains and maintains the seller's signed statement ~~receiving the regulated metals property shall record the name and address of the secondary metals recycler from which it received the regulated metals property in lieu of the requirements of~~



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~~paragraph (2)(h).~~

Section 6. Section 538.235, Florida Statutes, is amended to read:

538.235 Method of payment.—

(1) A secondary metals recycler may ~~shall~~ not enter into any cash transaction:

(a) In excess of \$1,000 in payment for the purchase of regulated metals property; or

(b) In any amount for the purchase of restricted regulated metals property.

(2) Payment in excess of \$1,000 for the purchase of regulated metals property or payment in any amount for the purchase of restricted regulated metals property must shall be made by check issued and payable to the seller or by electronic payment to the seller's bank account or the bank account of the seller's employer metal and payable to the seller.

Section 7. Subsection (5) of section 538.26, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

538.26 Certain acts and practices prohibited.—It is unlawful for a secondary metals recycler to do or allow any of the following acts:

(5) Purchase regulated metals property ~~in return for money~~ from a trailer, a vehicle, or any location other than a fixed location or from any person who is required to prove ownership ~~under s. 538.19 pursuant to subsection (4). However, regulated metals may be purchased from a nonfixed location, or from such person, with any negotiable or nonnegotiable instrument, including a check or draft or any other type of instrument~~



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~~purchased with money and sold for the purpose of making payments
or transfers to others.~~

(6) (a) Purchase any restricted regulated metals property
listed in paragraph (b) unless the secondary metals recycler
obtains reasonable proof that the seller:

1. Owns such property. Reasonable proof of ownership may
include, but is not limited to, a receipt or bill of sale; or

2. Is an employee, agent, or contractor of the property's
owner and is authorized to sell the property on behalf of the
owner. Reasonable proof of authorization to sell the property
includes, but is not limited to, a signed letter on the owner's
letterhead, dated no later than 90 days before the sale,
authorizing the seller to sell the property.

(b) The purchase of any of the following regulated metals
property is subject to the restrictions provided in paragraph
(a):

1. A manhole cover.

2. An electric light pole or other utility structure and
its fixtures, wires, and hardware that are readily identifiable
as connected to the utility structure.

3. A guard rail.

4. A street sign, traffic sign, or traffic signal and its
fixtures and hardware.

5. Communication, transmission, distribution, and service
wire from a utility, including copper or aluminum bus bars,
connectors, grounding plates, or grounding wire.

6. A funeral marker or funeral vase.

7. A historical marker.

8. Railroad equipment, including, but not limited to, a tie



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plate, signal house, control box, switch plate, E clip, or rail tie junction.

9. A metal item that is observably marked, upon reasonable inspection, with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.

10. A copper, aluminum, or aluminum-copper condensing or evaporator coil, including its tubing or rods, from an air-conditioning or heating unit, excluding coils from window air-conditioning or heating units and motor vehicle air-conditioning or heating units.

11. An aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts.

12. A stainless steel beer keg.

13. A catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a motor vehicle.

14. Metallic wire that has been burned in whole or in part to remove insulation.

15. A brass or bronze commercial valve or fitting, referred to as a "fire department connection and control valve" or an "FDC valve," which is commonly used on structures for access to water for the purpose of extinguishing fires.

16. A brass or bronze commercial potable water backflow preventer valve that is commonly used to prevent backflow of potable water from commercial structures into municipal domestic water service systems.

17. A shopping cart.

Section 8. Section 538.27, Florida Statutes, is created to read:

538.27 Secondary metals recyclers; limitation of liability;



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inference.—

(1) A secondary metals recycler is not liable for any civil claim of replevin or damages resulting from a purchase transaction of regulated metals property which complies with this chapter.

(2) As provided in s. 812.022(7), proof that a purchase transaction for regulated metals property by a secondary metals recycler complied with this part gives rise to an inference that the secondary metals recycler did not know or have reason to believe that the property was stolen and that the recycler did not have intent to commit theft or deal in stolen property.

Section 9. Section 538.28, Florida Statutes, is created to read:

538.28 Local government regulation; preemption.—

(1) The regulation of purchase transactions involving regulated metals property is preempted to the state. Except as provided in subsection (2), an ordinance or regulation adopted by a county or municipality relating to the purchase or sale of regulated metals property or the registration or licensure of secondary metals recyclers is void.

(2) This part does not preempt an ordinance or regulation originally enacted by a county or municipality before March 1, 2011, or any subsequent amendment to such ordinance or regulation.

Section 10. Paragraph (b) of subsection (2) of section 539.001, Florida Statutes, is amended to read:

539.001 The Florida Pawnbroking Act.—

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

(b) "Appropriate law enforcement official" means the



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sheriff of the county in which a pawnshop is located and ~~or~~, in
the case of a pawnshop located within a municipality, the police
chief of the municipality in which the pawnshop is located;
however, any sheriff or police chief may designate as the
appropriate law enforcement official for the county or
municipality, as applicable, any law enforcement officer working
within the county or municipality headed by that sheriff or
police chief. ~~Nothing in~~ This subsection does not limit ~~limits~~
the power and responsibilities of the sheriff.

Section 11. Subsection (7) is added to section 812.022,
Florida Statutes, to read:

812.022 Evidence of theft or dealing in stolen property.—

(7) Proof that a purchase transaction for regulated metals
property by a secondary metals recycler complied with part II of
chapter 538 gives rise to an inference that the secondary metals
recycler did not know or have reason to believe that the
property was stolen and that the recycler did not have intent to
commit theft or deal in stolen property.

Section 12. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to secondary metals recyclers;
amending s. 319.30, F.S.; conforming a cross-
reference; amending s. 538.03, F.S.; defining the term
"appropriate law enforcement official"; amending s.



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538.04, F.S.; clarifying a provision requiring that a secondhand dealer deliver a transaction form to the appropriate law enforcement official; amending s. 538.18, F.S.; revising and providing definitions; amending s. 538.19, F.S.; requiring that a secondary metals recycler complete a transaction form and transmit it to the appropriate law enforcement official within 24 hours after the acquisition of regulated metals; authorizing such recyclers to use an electronic database and transmit transaction forms electronically under certain circumstances; authorizing appropriate law enforcement officials to provide software and computer equipment to recyclers; requiring that a recycler produce an original form in certain situations; revising the period required for secondary metals recyclers to maintain certain information regarding purchase transactions involving regulated metals property; revising requirements for the types of information that secondary metals recyclers must obtain and maintain regarding purchase transactions; limiting the liability of secondary metals recyclers for the conversion of motor vehicles to scrap metal under certain circumstances; amending s. 538.235, F.S.; revising requirements for payments made by secondary metals recyclers to sellers of regulated metals property, to which penalties apply; providing methods of payment for restricted regulated metals property; requiring that purchases of certain property be made by check or by electronic payment;



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amending s. 538.26, F.S.; prohibiting secondary metals recyclers from purchasing regulated metals property without maintaining certain records; deleting provisions prohibiting the purchase of regulated metals property from certain persons or at certain locations; prohibiting the purchase of specified restricted regulated metals property without obtaining certain proof of the seller's ownership or authorization to sell the property; creating s. 538.27, F.S.; limiting civil liability of secondary metals recyclers under certain circumstances; establishing an inference that secondary metals recyclers do not commit theft or deal in stolen property under certain circumstances; creating s. 538.28, F.S.; preempting to the state the regulation of secondary metals recyclers and purchase transactions involving regulated metals property; exempting certain ordinances and regulations from preemption; amending s. 539.001, F.S.; clarifying a definition for purposes of the Florida Pawnbroking Act; amending s. 812.022, F.S.; establishing an inference that secondary metals recyclers do not commit theft or deal in stolen property under certain circumstances; providing an effective date.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment

Delete line 97
and insert:
water, oil, sewer service, or telephone, telegraph, radio
communications, or

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 Commerce and Tourism Committee

BILL: SB 1528

INTRODUCER: Senator Altman

SUBJECT: Secondary metals recyclers

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Pre-meeting
2.			CA	
3.			CJ	
4.			BC	
5.				
6.				

I. Summary:

This bill creates a new category of “regulated metals property” – “restricted regulated metals property” – and imposes restrictions on the purchase of such property. Generally, “restricted regulated metals property” includes metals used by a utility defined as:

“a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, that is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, or telecommunications service.”

“Restricted regulated metals property” includes manhole covers, electric light poles, guard rails, traffic signs, utility communication wire, funeral and historical markers, railroad equipment, metal marked by a governmental entity, utility company, cemetery or railroad, condensing or evaporator coils from air conditioning equipment, propane tanks, beer kegs, catalytic converters, metallic wire from which the insulation has been removed, certain brass or bronze fixtures, and shopping carts.

Recyclers may only purchase such property after obtaining “reasonable proof” that the seller owns the property or is authorized to sell the property on behalf of the owner. In addition, recyclers may not provide cash for purchases of restricted regulated metals property.

This bill limits the liability for those recyclers who comply with the act. It also creates an inference regarding the recycler’s knowledge and intent with respect to theft and dealing in stolen property for those recyclers who comply with this law for conversion of a motor vehicle to scrap metal.

Finally, this bill preempts the regulation of regulated metals property or the registration or licensure of secondary metals recyclers to the state, except for such local ordinances existing before March 1, 2011.

This bill substantially amends the following sections of the Florida Statutes:
s. 319 F.S., s.538, F.S., and s.812.022 F.S., and creates s.538.27 F.S., s.538.28 F.S.

II. Present Situation:

Currently no person may engage in business as a secondary metals recycler at any location without registering with the department of revenue.¹ A secondary metals recycler means any person who:

- Is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
- Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.²

“Regulated metals property” means any item composed primarily of any nonferrous metals, but may not include aluminum beverage containers, used beverage containers, or similar beverage containers. The term shall include stainless steel beer kegs.³

Secondary metals recyclers must maintain legible records of all purchase transactions to which the secondary metals recycler is a party. The secondary metals recycler must maintain the records of the purchase transactions for 5 years.

The following information must be maintained on a form approved by the Department of Law Enforcement for each purchase transaction:

- The name and address of the secondary metals recycler.
- The name, initials, or other identification of the individual entering the information on the ticket.
- The date and time of the transaction.
- The weight, quantity, or volume, and a description of the type of regulated metals property purchased in a purchase transaction.

¹ Section 538.25(1), F.S.

² Section 538.18(8), F.S.

³ Section 538.18(7), F.S.

- The amount of consideration given in a purchase transaction for the regulated metals property.
- A signed statement from the person delivering the regulated metals property stating that she or he is the rightful owner of, or is entitled to sell, the regulated metals property being sold. If the purchase involves a stainless steel beer keg, the seller must provide written documentation from the manufacturer that the seller is the owner of the stainless steel beer keg or is an employee or agent of the manufacturer.
- The distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler.
- description of the person from whom the goods were acquired, including:
 - Full name, current residential address, workplace, and home and work phone numbers.
 - Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.
 - The right thumbprint, free of smudges and smears.
 - Vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property.
 - Any other information required by the form approved by the Department of Law Enforcement.
- A photograph, videotape, or digital image of the regulated metals being sold.
- A photograph, videotape, or similar likeness of the person receiving consideration in which such person's facial features are clearly visible.⁴

If a purchase transaction involves the transfer of regulated metals property from a secondary metals recycler registered with the department to another secondary metals recycler registered with the department, the secondary metals recycler receiving the regulated metals property must record the name and address of the secondary metals recycler from which it received the regulated metals property in lieu of the requirements listed above.⁵

Additionally a secondary metals recycler may not enter into any cash transaction in excess of \$1,000 in payment for the purchase of regulated metals property. Payment in excess of \$1,000 for the purchase of regulated metals property must be made by check issued to the seller of the metal and payable to the seller.⁶

A law enforcement officer may issue a hold notice to a secondary metals recycler if he believes the metals involved have been stolen.⁷ The hold notice is for 15 days unless extended an additional 45 days by the law enforcement officer.

Currently ch. 538 F.S., contains a provision for a petition for return of stolen regulated metals property that states once a timely, proper petition is filed with the court the secondary metals

⁴ Section 538.19(2), F.S.

⁵ Section 538.19(5), F.S.

⁶ Section 538.235, F.S.

⁷ Section 538.21(1), F.S.

recycler will hold and not process the regulated metals property at issue until the court determines the respective interests of the parties.

In addition to the civil petition for return remedy, the state may file a motion as part of a pending criminal case related to the property. The criminal court has jurisdiction to determine ownership, to order return or other disposition of the property, and to order any appropriate restitution to any person. The order must be entered upon hearing after proper notice has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

There is no provision within this section creating an inference that the secondary metals recycler is not liable for any civil claim of replevin or damages resulting from a purchase transaction of regulated materials that complies with ch. 538, F.S.

Currently there is no pre-emption language in the statute regarding secondary metals recyclers except s. 538.20(4), F.S. relating to a secondary metals recycler holding such metals pursuant to this statute. After a preliminary review it would appear several local communities do regulate secondary metals recyclers.

III. Effect of Proposed Changes:

Section 1 amends s. 538.18 F.S., to create a new category of “regulated metals property” – “restricted regulated metals property.” The term is defined by reference to proposed s. 538.26(6)(b), F.S., (see Section 5 of the bill), and includes:

- manhole covers;
- electric light poles;
- guard rails;
- traffic signs;
- utility communication wire;
- funeral and historical markers;
- railroad equipment;
- metal marked by a governmental entity,
- utility company,
- cemetery or railroad;
- condensing or evaporator coils from air conditioning equipment;
- propane tanks;
- beer kegs;
- catalytic converters;
- metallic wire from which the insulation has been removed;
- certain brass or bronze fixtures; and
- shopping carts.

This section also creates a definition for “utility,” a source of some of these materials. Utility is defined as:

“a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, that is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, or telecommunications service.”

Section 2 amends s. 319.30, F.S., to correct a cross-reference necessitated by changes proposed in section 1.

Section 3 amends s. 538.19, F.S., to clarify a recycler’s liability for purchases of motor vehicles from a licensed salvage motor vehicle dealer. Specifically, if the recycler uses a mechanical crusher to convert the vehicle to scrap and has obtained and maintains proof, a signed statement from the seller that he has complied with the titling laws, the recycler is not liable for the seller’s failure to comply with the titling law for conversion of a motor vehicle to scrap.

In addition, it reduces the time that recyclers must maintain purchase transaction records from 5 years to 2 years.

Section 4 amends s. 538.235, F.S., to restrict recyclers from paying cash for restricted regulated metals, as defined in section 5 of this bill. Furthermore, it restricts the payment in excess of \$1,000 for the purchase of regulated metals property, or payment in any amount for the purchase of restricted regulated metals property, unless such purchases are by check issued and payable to the seller or by electronic payment to the seller’s bank account or the bank account of the seller’s employer.

Section 5 amends s. 538.26(5), F.S., to specify that regulated metal property may only be purchased from a fixed location. Current law allows purchases of such property from a non-fixed location if paid by check or other type of instrument.

In addition, this section creates subsection (6) to prohibit recyclers from purchasing restricted regulated metals property, unless the recycler obtains “reasonable proof” that the seller owns the property or is authorized to sell the property on behalf of the owner. This section also lists all those items to be considered restricted regulated metals as referenced in Section 1.

Section 6 creates s. 538.27, F.S., to limit the liability for those recyclers who comply with the requirements for the purchase of regulated metals property as specified by this act.

It also creates an inference that the secondary metals recycler did not know or have reason to believe that the property was stolen and did not have intent to commit theft or deal in stolen property if he complied with this section of the law.

Section 7 creates s. 538.28, F.S., to preempt the regulation of regulated metals property or the registration or licensure of secondary metals recyclers to the state, except for such local ordinances existing before March 1, 2011.

Section 8 creates subsection (7) of s. 812.022, F.S., to expand what constitutes evidence of theft as it relates to purchase transactions of regulated metals property. Specifically any secondary

metals recycler who has complied with part II of ch. 538, F.S., dealing with secondary metals recyclers gives rise to an inference that the recycler did not know or have reason to believe that the property was stolen and did not have intent to commit theft or deal in stolen property.

Section 9 provides an effective date of July 1, 2011.

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 bill imposes new restrictions on the purchase of regulated metals property. The bill also reduces the time period for which recyclers must maintain records, thereby reducing associated costs.

C. Government Sector Impact:

Section 7 creates s. 538.28, F.S., to preempt the regulation of regulated metals property or the registration or licensure of secondary metals recyclers to the state, except for such local ordinances existing before March 1, 2011.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial 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.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment

Delete line 182
and insert:
regulated under this section in a uniform that bears at least

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 Commerce and Tourism Committee

BILL: SB 1588

INTRODUCER: Senator Latvala

SUBJECT: Licensed security officers

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Pre-meeting
2.			CJ	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill increases and specifically establishes penalties for impersonating a Security Officer, Private Investigator, or Recovery Agent, as licensed by the Department of Agriculture and Consumer Services (DACS or department) under ch. 493, F.S. If a person engages in any activity for which ch. 493, F.S., requires a license, but acts without having a license, they commit a misdemeanor of the first degree. For second or subsequent offenses, the person commits a felony of the third degree, and DACS is authorized to impose a civil penalty not to exceed \$10,000. However, penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of the person's license. The bill also provides penalties for activities related to the impersonation of a Licensed Security Officer, Private Investigator, or Recovery Agent.

The bill expands the authority of an armed licensed security officer or armed licensed security agency manager to allow them to detain a person on the premises of a critical infrastructure facility if the security officer has probable cause to believe that the person has committed or is committing a crime and for the purpose of ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention. The bill provides procedures for notifying law enforcement and transfer of the detained person.

The bill also authorizes the security officer to search the person detained if he observes that the person temporarily detained is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer, or the detainee admits to the security officer that he or she is armed with a weapon.

This bill substantially amends ch. 493, and creates an undesignated section of the Florida Statutes.

II. Present Situation:

Private Security, Private Investigative, and Recovery Services

The Division of Licensing of the Department of Agriculture and Consumer Services is responsible for the regulation of licensing of private security, private investigative and recovery services.¹

A **security officer** is defined as:

any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, chooses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.²

A “**private investigator**” is defined as “any individual who, for consideration, advertises as providing or performs private investigation.”³ Private investigation is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefore.⁴

A “**recovery agent**” is defined as “any individual who, for consideration, advertises as providing or performs reposessions.”⁵ “Recovery agency” is defined as “any person who, for consideration, advertises as providing or is engaged in the business of performing

¹ Regulating private investigative, private security, and recovery industries was assigned to the Department of State in 1965. In 2002, the Division of Licensing of the Department of State was transferred to the Department of Agriculture and Consumer Services, including the Concealed Weapons Permit Program. See ss. 1, 3-10, Ch. 2002-295, L.O.F.

² Section 493.6101(19), F.S.

³ Section 493.6101(16), F.S.

⁴ Section 493.6101(17), F.S.

⁵ Section 493.6101(21), F.S.

repossessions.”⁶ “Repossession” means recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, industrial equipment, and motor homes:

“...by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.”⁷

Certain individuals are exempt from the licensing requirements for private security and private investigative services. These include local, state, and federal law enforcement officers, licensed insurance investigators and individuals solely, exclusively, and regularly employed as unarmed investigators and security officers “in connection with the business of his or her employer, when there exists an employer-employee relationship.”⁸

Florida law establishes criteria for granting licenses for security, private investigative, and repossession services. Individuals seeking a license must clear a criminal background check as well as meet specific training and experience requirements, which vary by the type of license. In addition, the applicant must:

- Be at least 18 years of age;
- Be of good moral character;
- Not be adjudicated incapacitated; Not be a chronic and habitual user of alcoholic beverages to the extent normal faculties are impaired;
- Not have been committed for abuse of controlled substances or found guilty of a crime under ch. 893, F.S.; and
- Be a citizen or legal resident alien of the U.S, or have been granted authorization to seek employment in this country.⁹

License Classifications

Ch. 493, F.S., provides for many numerous classifications of licenses within the three general categories of licenses, as follows:¹⁰

PRIVATE INVESTIGATION

Agency	Class “A”
Private Investigator	Class “C”
Armed Private Investigator	Class “C” & Class “G”
Branch Office	Class “AA”
Manager	Class “C” or Class “MA” or Class “M”
Intern	Class “CC”

PRIVATE SECURITY

Agency	Class “B”
Security Officer	Class “D”
Armed Security Officer	Class “D” & Class “G”
Branch Office	Class “BB”
Manager	Class “MB” or Class “M”

⁶ Section 493.6101(20), F.S.

⁷ Section 493.6101(22), F.S.

⁸ Section 493.6102(1)-(4), F.S.

⁹ Section 493.6106(1), F.S.

¹⁰ See. 5N-1.116(1), F.A.C.

REPOSSESSION ACTIVITY

Agency	Class "R"
Recovery Agent	Class "E"
Branch Office	Class "RR"
Manager	Class "MR" or Class "E"
Intern	Class "EE"

COMBINED PRIVATE INVESTIGATION AND SECURITY

Agency	Class "A" & Class "B"
Branch Office	Class "AB"
Manager	Class "M"

SCHOOLS

Security Officer School or Training Facility	Class "DS"
Security Officer Instructor	Class "DI"
Recovery Agent School or Training Facility	Class "RS"
Recovery Agent Instructor	Class "RI"

FIREARMS

Instructor	Class "K"
Statewide Firearm License	Class "G"

MANAGERS

Private Investigative Agency or Branch	Class "C", "MA", or "M"
Private Security Agency or Branch	Class "MB" or "M"
Recovery Agency or Branch	Class "E" or "MR"
Armed Manager	Appropriate Manager's License and Class "G"

D, MB, and G Licenses

Generally, an applicant for a Class "D" security officer license must complete a minimum of 40 hours of professional training at a school or training facility licensed by the department, which establishes by rule the general content and number of hours of each subject area to be taught. Class MB security officers may manage a security agency. Class G officers have special firearms training requirements and are authorized to carry their firearms on duty.

Class D and Class G security officers who are employed at seaports and who are given the power to detain persons are further required to be certified under the Maritime Transportation Security Act or s. 311.121, F. S.

The statutorily-specified certification curriculum for the seaport security officer training program includes no less than 218 hours of initial certification training that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties.

Pursuant to s. 311.124, F.S., these particular Class D or G security officers are given the power to detain persons for a reasonable period of time if they have "probable cause to believe that a person is trespassing ... in a designated restricted area" pending the arrival of a law enforcement officer. In addition, this action does not "render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention." Furthermore, the seaport security officer must, upon detaining a person for trespass, immediately call a certified law enforcement officer to the scene.

To date, the department has not issued any revised licenses to a class “D” security officer stating that the person is certified as a seaport security officer.

Impersonating a Licensee

Section 493.6116(1), F.S., authorizes DACS to “take disciplinary action” against “any unlicensed person engaged in activities regulated” in ch. 493, F.S., related to Private Security, Private Investigative, and Recovery Services. Grounds for such disciplinary action include:

- Conducting activities regulated under this chapter without a license or with a revoked or suspended license;
- Impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer;
- Knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, capias, warrant, injunction, or cease and desist order, in the course of business regulated under this chapter; and
- Violating any provision of this chapter.

Section 493.6120, F.S., provides that any person who violates any provision of ch. 493, F.S., with one exception, commits a misdemeanor of the first degree.¹¹ DACS is authorized to institute judicial proceedings in the appropriate circuit court seeking enforcement of ch. 493, F.S., or any rule or order of DACS.¹²

The Power to Detain

Florida Statute authorizes a law enforcement officer, a merchant, a farmer, or their employee or agent, who has probable cause to believe that a retail theft, farm theft, or trespass, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time.¹³ The subsection further prescribes that in the event the merchant, merchant’s employee, farmer, or a transit agency’s employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody. The subsection is also applicable to transit fare evasion with respect to detention. Innkeepers and food service establishment operators likewise have the statutory authority to “take a person into custody and detain that person” if there is probable cause to believe the person is engaging in disorderly conduct that threatens the safety of the person or others.¹⁴ In these situations it is also required that law enforcement be called immediately.

“Citizen’s Arrest”

Under Florida law a citizen has a common law right to make a “citizen’s arrest” for a felony, or a breach of the peace committed in his presence. The citizen may make such an arrest and justify

¹¹ The exception is s. 493.6405(3), F.S., which deals with the sale of motor vehicles, mobile homes, motorboats, aircraft, personal watercraft, all-terrain vehicles, farm equipment or industrial equipment by a recovery agent or intern.

¹² Section 493.6121(7), F.S.

¹³ Section 812.015(3)(a), F.S.

¹⁴ Section 509.143, F.S.

his failure to obtain a warrant by proving the person's guilt. *Phoenix v. State*, 455 So.2d 1024 (Fla. 1984).

III. Effect of Proposed Changes:

Section 1 amends s. 493.6120, F.S., to increase and specifically establish penalties for impersonating a Security Officer, Private Investigator, or Recovery Agent, as licensed by the Department of Agriculture and Consumer Services (DACS or department) under ch. 493, F.S. Specifically, if a person engages in any activity for which ch. 493, F.S., requires a license, but acts without having a license, they commit a misdemeanor of the first degree. For second or subsequent offenses, the person commits a felony of the third degree, and DACS is authorized to impose a civil penalty not to exceed \$10,000. However, penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of the person's license.

The bill also provides that a person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S., commits a felony of the third degree. A person who impersonates a security officer or other designated officer during the commission of a felony commits a felony of the second degree and a person who impersonates a security officer or other designated officer during the commission of a felony that results in death or serious bodily injury to another human being commits a felony of the first degree.

Section 2 creates an undesignated provision in the Florida Statutes to provide that an armed licensed security officer or an armed licensed security agency manager licensed under ch. 493, F.S., be allowed to temporarily detain a person on the premises of a critical infrastructure facility if the security officer has probable cause to believe that the person has committed or is committing a crime. The individual may be detained for the purpose of ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention. The security officer must notify the law enforcement agency as soon as possible, and the person may be detained until a responding law enforcement officer arrives at the critical infrastructure facility. The custody of any person temporarily detained must be immediately transferred to the responding law enforcement officer unless the law enforcement officer requests the security officer to assist in detaining the person.

The security officer is authorized to search the person detained if the security officer observes that the person is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer, or the detainee admits to the security officer that he or she is armed with a weapon. The security officer is required to seize any weapon discovered and transfer the weapon to the responding law enforcement officer.

This section defines the term "critical infrastructure facility" to mean any one of the following, if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized personnel and is determined by a state or federal authority to be so vital to the state that the incapacity or destruction of the facility would have a debilitating impact on security, state economic stability, state public health or safety, or any combination of those matters:

- A chemical manufacturing facility;
- A refinery;
- An electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station;
- A natural gas transmission compressor station;
- A liquid natural gas terminal or storage facility;
- A telecommunications central switching office;
- A deep water seaport or railroad switching yard; or
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

In addition, a security officer or manager must perform duties required “under this chapter” in a uniform that bears at least one patch or emblem visible at all time clearly indentifying the employing agency.

Section 3 provides an effective date July 1, 2011.

Other Potential Implications:

While a person may know that physical barriers and signage indicate that trespassing may be unlawful, they may be unaware that they are in a “critical infrastructure facility” where security personnel would have the lawful authority to detain and search them, if otherwise warranted. The designation of “critical infrastructure facility” is not necessarily public information.

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:

It is possible that a person who is detained under this bill could raise Fourth Amendment search and seizure issues. The bill statutorily authorizes one citizen, arguably “under color of law,” to detain and search another citizen virtually *on behalf of* law enforcement. For that reason, security officers who undertake a detention and subsequent search under

the parameters authorized in the bill should be aware that any evidence they seize may be later used as evidence in a criminal case and it should be handled accordingly.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

None

VI. Technical Deficiencies:

Section 2 of the bill requires a security officer or manager to perform duties required “under this chapter” in a uniform that bears at least one patch or emblem visible at all time clearly indentifying the employing agency. The clause “under this chapter” should be replaced with “under this section” as the bill creates provisions in an undesignated section of the Florida Statutes.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 14.26, Florida
Statutes, is amended to read:

14.26 Citizen's Assistance Office.—

(4) The Citizen's Assistance Office shall refer consumer-
oriented complaints to the Division of Consumer Protection
~~Services~~ of the Department of Agriculture and Consumer Services.

Section 2. Paragraph (e) of subsection (2) of section
20.14, Florida Statutes, is amended to read:



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20.14 Department of Agriculture and Consumer Services.—
There is created a Department of Agriculture and Consumer
Services.

(2) The following divisions of the Department of
Agriculture and Consumer Services are established:

(e) Consumer Protection Services.

Section 3. Paragraph (q) of subsection (8) of section
213.053, Florida Statutes, as amended by chapter 2010-280, Laws
of Florida, is amended to read:

213.053 Confidentiality and information sharing.—

(8) Notwithstanding any other provision of this section,
the department may provide:

(q) Names, addresses, and sales tax registration
information to the Division of Consumer Protection Services of
the Department of Agriculture and Consumer Services in the
conduct of its official duties.

Disclosure of information under this subsection shall be
pursuant to a written agreement between the executive director
and the agency. Such agencies, governmental or nongovernmental,
shall be bound by the same requirements of confidentiality as
the Department of Revenue. Breach of confidentiality is a
misdemeanor of the first degree, punishable as provided by s.
775.082 or s. 775.083.

Section 4. Paragraphs (a) and (b) of subsection (2) of
section 320.275, Florida Statutes, are amended to read:

320.275 Automobile Dealers Industry Advisory Board.—

(2) MEMBERSHIP, TERMS, MEETINGS.—

(a) The board shall be composed of 12 members. The



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executive director of the Department of Highway Safety and Motor Vehicles shall appoint the members from names submitted by the entities for the designated categories the member will represent. The executive director shall appoint one representative of the Department of Highway Safety and Motor Vehicles, who must represent the Division of Motor Vehicles; two representatives of the independent motor vehicle industry as recommended by the Florida Independent Automobile Dealers Association; two representatives of the franchise motor vehicle industry as recommended by the Florida Automobile Dealers Association; one representative of the auction motor vehicle industry who is from an auction chain and is recommended by a group affiliated with the National Auto Auction Association; one representative of the auction motor vehicle industry who is from an independent auction and is recommended by a group affiliated with the National Auto Auction Association; one representative from the Department of Revenue; a Florida tax collector representative recommended by the Florida Tax Collectors Association; one representative from the Better Business Bureau; one representative from the Department of Agriculture and Consumer Services, who must represent the Division of Consumer Protection Services; and one representative of the insurance industry who writes motor vehicle dealer surety bonds.

(b)1. The executive director shall appoint the following initial members to 1-year terms: one representative from the motor vehicle auction industry who represents an auction chain, one representative from the independent motor vehicle industry, one representative from the franchise motor vehicle industry, one representative from the Department of Revenue, one Florida



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71 tax collector, and one representative from the Better Business
72 Bureau.

73 2. The executive director shall appoint the following
74 initial members to 2-year terms: one representative from the
75 motor vehicle auction industry who represents an independent
76 auction, one representative from the independent motor vehicle
77 industry, one representative from the franchise motor vehicle
78 industry, one representative from the Division of Consumer
79 Protection Services, one representative from the insurance
80 industry, and one representative from the Division of Motor
81 Vehicles.

82 3. As the initial terms expire, the executive director
83 shall appoint successors from the same designated category for
84 terms of 2 years. If renominated, a member may succeed himself
85 or herself.

86 4. The board shall appoint a chair and vice chair at its
87 initial meeting and every 2 years thereafter.

88 Section 5. Section 320.90, Florida Statutes, is amended to
89 read:

90 320.90 Notification of consumer's rights.—The department
91 shall develop a motor vehicle consumer's rights pamphlet which
92 shall be distributed free of charge ~~by the Department of~~
93 ~~Agriculture and Consumer Services~~ to the motor vehicle owner
94 upon request. Such pamphlet must contain information relating to
95 odometer fraud and provide a summary of the rights and remedies
96 available to all purchasers of motor vehicles.

97 Section 6. Section 366.85, Florida Statutes, is amended to
98 read:

99 366.85 Responsibilities of Division of Consumer Protection



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~~Services.~~—The Division of Consumer Protection Services of the Department of Agriculture and Consumer Services is ~~shall be~~ the agency responsible for consumer conciliatory conferences, if such conferences are required pursuant to federal law. The division shall also be the agency responsible for preparing lists of sources for energy conservation products or services and of financial institutions offering energy conservation loans, if such lists are required pursuant to federal law. Notwithstanding any provision of federal law to the contrary, the division shall not require any manufacturer's warranty exceeding 1 year in order for a source of conservation products or services to be included on the appropriate list. The lists shall be prepared for the service area of each utility and shall be furnished to each utility for distribution to its customers. The division shall update the lists on a systematic basis and shall remove from any list any person who has been disciplined by any state agency or who has otherwise exhibited a pattern of unsatisfactory work and any person who requests removal from such lists. The division may ~~is authorized to~~ adopt rules to implement the provisions of this section.

Section 7. Section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

(1) Each individual, partner, or principal officer in a corporation, shall file with the department a complete application accompanied by an application fee not to exceed \$60, except that the applicant for a Class "D" or Class "G" license is ~~shall~~ not be required to submit an application fee. The application fee is ~~shall~~ not be refundable.



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(a) The application submitted by any individual, partner, or corporate officer must ~~shall~~ be approved by the department before the ~~prior to that~~ individual, partner, or corporate officer assumes ~~assuming~~ his or her duties.

(b) Individuals who invest in the ownership of a licensed agency, but do not participate in, direct, or control the operations of the agency are ~~shall~~ not ~~be~~ required to file an application.

(2) Each application must ~~shall~~ be signed and verified by the individual under oath as provided in s. 92.525 ~~and shall be~~ ~~notarized~~.

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

(a) Name and any aliases.

(b) Age and date of birth.

(c) Place of birth.

(d) Social security number or alien registration number, whichever is applicable.

(e) Current ~~Present~~ residence address and mailing address ~~his or her residence addresses within the 5 years immediately preceding the submission of the application.~~

~~(f) Occupations held presently and within the 5 years immediately preceding the submission of the application.~~

~~(f)-(g)~~ A statement of all criminal convictions, findings of guilt, and pleas of guilty or nolo contendere, regardless of adjudication of guilt. An applicant for a Class "G" or Class "K" license who is younger than 24 years of age shall also include a statement regarding any finding of having committed a delinquent



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act in any state, territory, or country which would be a felony if committed by an adult and which is punishable by imprisonment for a term exceeding 1 year.

(g) One passport-type color photograph taken within the 6 months immediately preceding submission of the application.

(h) A statement whether he or she has ever been adjudicated incompetent under chapter 744.

(i) A statement whether he or she has ever been committed to a mental institution under chapter 394.

(j) A full set of fingerprints on a card provided by the department and a fingerprint fee to be established by rule of the department based upon costs determined by state and federal agency charges and department processing costs. An applicant who has, within the immediately preceding 6 months, submitted a fingerprint card and fee for licensing purposes under this chapter is ~~shall~~ not be required to submit another fingerprint card or fee.

(k) A personal inquiry waiver that ~~which~~ allows the department to conduct necessary investigations to satisfy the requirements of this chapter.

(l) Such further facts as may be required by the department to show that the individual signing the application is of good moral character and qualified by experience and training to satisfy the requirements of this chapter.

~~(4) In addition to the application requirements outlined in subsection (3), the applicant for a Class "C," Class "CC," Class "E," Class "EE," or Class "G" license shall submit two color photographs taken within the 6 months immediately preceding the submission of the application, which meet specifications~~



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~~prescribed by rule of the department. All other applicants shall submit one photograph taken within the 6 months immediately preceding the submission of the application.~~

~~(4)(5)~~ In addition to the application requirements outlined under subsection (3), the applicant for a Class "C," Class "E," Class "M," Class "MA," Class "MB," or Class "MR" license must ~~shall~~ include a statement on a form provided by the department of the experience that ~~which~~ he or she believes will qualify him or her for such license.

~~(5)(6)~~ In addition to the requirements outlined in subsection (3), an applicant for a Class "G" license must ~~shall~~ satisfy minimum training criteria for firearms established by rule of the department, which training criteria includes ~~shall include~~, but is not limited to, 28 hours of range and classroom training taught and administered by a Class "K" licensee; however, no more than 8 hours of such training shall consist of range training. If the applicant submits ~~can show~~ proof that he or she is an active law enforcement officer currently certified under the Criminal Justice Standards and Training Commission or has completed the training required for that certification within the last 12 months, or if the applicant submits one of the certificates specified in paragraph (6)(a) ~~(7)(a)~~, the department may waive the foregoing firearms training requirement.

~~(6)(7)~~ In addition to the requirements under subsection (3), an applicant for a Class "K" license must ~~shall~~:

(a) Submit one of the following ~~certificates~~:

1. The Florida Criminal Justice Standards and Training Commission Instructor ~~Firearms Instructor's~~ Certificate and



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216 written confirmation by the commission that the applicant
217 possesses an active firearms certification.

218 ~~2. The National Rifle Association Police Firearms~~
219 ~~Instructor's Certificate.~~

220 ~~2.3. The National Rifle Association Private Security~~
221 ~~Firearm Instructor Firearms Instructor's Certificate.~~

222 ~~3.4. A firearms instructor instructor's certificate issued~~
223 ~~by from a federal law enforcement agency, state, county, or~~
224 ~~municipal police academy in this state recognized as such by the~~
225 ~~Criminal Justice Standards and Training Commission or by the~~
226 ~~Department of Education.~~

227 (b) Pay the fee for and pass an examination administered by
228 the department which shall be based upon, but is not necessarily
229 limited to, a firearms instruction manual provided by the
230 department.

231 ~~(7)(8)~~ In addition to the application requirements for
232 individuals, partners, or officers outlined under subsection
233 (3), the application for an agency license must ~~shall~~ contain
234 the following information:

235 (a) The proposed name under which the agency intends to
236 operate.

237 (b) The street address, mailing address, and telephone
238 numbers of the principal location at which business is to be
239 conducted in this state.

240 (c) The street address, mailing address, and telephone
241 numbers of all branch offices within this state.

242 (d) The names and titles of all partners or, in the case of
243 a corporation, the names and titles of its principal officers.

244 ~~(8)(9)~~ Upon submission of a complete application, a Class



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"CC," Class "C," Class "D," Class "EE," Class "E," Class "M," Class "MA," Class "MB," or Class "MR" applicant may commence employment or appropriate duties for a licensed agency or branch office. However, the Class "C" or Class "E" applicant must work under the direction and control of a sponsoring licensee while his or her application is being processed. If the department denies application for licensure, the employment of the applicant must be terminated immediately, unless he or she performs only unregulated duties.

Section 8. Paragraph (f) of subsection (1) and paragraph (a) of subsection (2) of section 493.6106, Florida Statutes, are amended, and paragraph (g) is added to subsection (1) of that section, to read:

493.6106 License requirements; posting.—

(1) Each individual licensed by the department must:

(f) Be a citizen or permanent legal resident alien of the United States or have appropriate ~~been granted~~ authorization issued to seek employment in this country by the United States Bureau of Citizenship and Immigration Services of the United States Department of Homeland Security.

1. An applicant for a Class "C," Class "CC," Class "D," Class "DI," Class "E," Class "EE," Class "M," Class "MA," Class "MB," Class "MR," or Class "RI" license who is not a United States citizen must submit proof of current employment authorization issued by the United States Citizenship and Immigration Services or proof that she or he is deemed a permanent legal resident alien by the United States Citizenship and Immigration Services.

2. An applicant for a Class "G" or Class "K" license who is



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

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

(g) Not be prohibited from purchasing or possessing a firearm by state or federal law if the individual is applying for a Class "G" license or a Class "K" license.

(2) Each agency shall have a minimum of one physical location within this state from which the normal business of the agency is conducted, and this location shall be considered the primary office for that agency in this state.

(a) If an agency or branch office desires to change the physical location of the business, as it appears on the agency license, the department must be notified within 10 days of the change, and, except upon renewal, the fee prescribed in s. 493.6107 must be submitted for each license requiring revision. Each license requiring revision must be returned with such notification.



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Section 9. Subsection (3) of section 493.6107, Florida Statutes, is amended to read:

493.6107 Fees.—

(3) The fees set forth in this section must be paid by ~~certified~~ check or money order or, at the discretion of the department, by electronic funds transfer ~~agency check~~ at the time the application is approved, except that the applicant for a Class "G" or Class "M" license must pay the license fee at the time the application is made. If a license is revoked or denied or if the application is withdrawn, the license fee is nonrefundable ~~shall not be refunded~~.

Section 10. Subsections (1) and (3) of section 493.6108, Florida Statutes, are amended to read:

493.6108 Investigation of applicants by Department of Agriculture and Consumer Services.—

(1) Except as otherwise provided, ~~prior to the issuance of a license under this chapter,~~ the department must investigate an ~~shall make an investigation of the~~ applicant for a license under this chapter before it may issue the license. The investigation must ~~shall~~ include:

(a)1. An examination of fingerprint records and police records. ~~If when~~ a criminal history record check ~~analysis~~ of any applicant under this chapter is performed by means of fingerprint card identification, the time limitations prescribed by s. 120.60(1) shall be tolled during the time the applicant's fingerprint card is under review by the Department of Law Enforcement or the United States Department of Justice, Federal Bureau of Investigation.

2. If a legible set of fingerprints, as determined by the



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Department of Law Enforcement or the Federal Bureau of Investigation, cannot be obtained after two attempts, the Department of Agriculture and Consumer Services may determine the applicant's eligibility based upon a criminal history record check under the applicant's name conducted by the Department of Law Enforcement if the ~~and the Federal Bureau of Investigation.~~ ~~A set of~~ fingerprints are taken by a law enforcement agency or the department and the applicant submits a written statement signed by the fingerprint technician or a licensed physician stating that there is a physical condition that precludes obtaining a legible set of fingerprints or that the fingerprints taken are the best that can be obtained ~~is sufficient to meet this requirement.~~

(b) An inquiry to determine if the applicant has been adjudicated incompetent under chapter 744 or has been committed to a mental institution under chapter 394.

(c) Such other investigation of the individual as the department may deem necessary.

(3) The department must ~~shall~~ also investigate the mental history and current mental and emotional fitness of any Class "G" or Class "K" applicant, and may deny a Class "G" or Class "K" license to anyone who has a history of mental illness or drug or alcohol abuse.

Section 11. Subsections (2) and (4) of section 493.6111, Florida Statutes, are amended to read:

493.6111 License; contents; identification card.—

(2) Licenses shall be valid for a period of 2 years, except for Class "K" firearms instructor licenses and Class "A," Class "B," Class "AB," Class "R," and branch agency licenses, which



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shall be valid for a period of 3 years.

(4) Notwithstanding the existence of a valid Florida corporate registration, an ~~no~~ agency or school licensee may not conduct activities regulated under this chapter under any fictitious name without prior written authorization from the department to use that name in the conduct of activities regulated under this chapter. The department may not authorize the use of a name that ~~which~~ is so similar to that of a public officer or agency, or of that used by another licensee, that the public may be confused or misled thereby. The authorization for the use of a fictitious name must ~~shall~~ require, as a condition precedent to the use of such name, the filing of a certificate of engaging in business under a fictitious name under s. 865.09. A No licensee may not ~~shall be permitted to~~ conduct business under more than one name except as separately licensed nor shall the license be valid to protect any licensee who is engaged in the business under any name other than that specified in the license. An agency desiring to change its licensed name must ~~shall~~ notify the department and, except upon renewal, pay a fee not to exceed \$30 for each license requiring revision including those of all licensed employees except Class "D" or Class "G" licensees. Upon the return of such licenses to the department, revised licenses shall be provided.

Section 12. Subsections (2) and (3) of section 493.6113, Florida Statutes, are amended to read:

493.6113 Renewal application for licensure.—

(2) At least ~~No less than~~ 90 days before ~~prior to~~ the expiration date of the license, the department shall mail a written notice to the last known mailing ~~residence~~ address of



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the licensee ~~for individual licensees and to the last known~~
~~agency address for agencies.~~

(3) Each licensee ~~is~~ shall be responsible for renewing his
or her license on or before its expiration by filing with the
department an application for renewal accompanied by payment of
the prescribed license fee.

(a) Each Class "B" ~~Class "A," Class "B," or Class "R"~~
licensee shall additionally submit on a form prescribed by the
department a certification of insurance that ~~which~~ evidences
that the licensee maintains coverage as required under s.
493.6110.

(b) Each Class "G" licensee shall additionally submit proof
that he or she has received during each year of the license
period a minimum of 4 hours of firearms recertification training
taught by a Class "K" licensee and has complied with such other
health and training requirements which the department may adopt
by rule. If proof of a minimum of 4 hours of annual firearms
recertification training cannot be provided, the renewal
applicant shall complete the minimum number of hours of range
and classroom training required at the time of initial
licensure.

(c) Each Class "DS" or Class "RS" licensee shall
additionally submit the current curriculum, examination, and
list of instructors.

(d) Each Class "K" firearms instructor licensee shall
additionally submit one of the certificates specified under s.
493.6105(6) as proof that he or she remains certified to provide
firearms instruction.

Section 13. Subsection (8), paragraph (d) of subsection



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(12), and subsection (16) of section 493.6115, Florida Statutes, are amended to read:

493.6115 Weapons and firearms.—

(8) A Class "G" applicant must satisfy the minimum training criteria as set forth in s. 493.6105(5) ~~493.6105(6)~~ and as established by rule of the department.

(12) The department may issue a temporary Class "G" license, on a case-by-case basis, if:

(d) The applicant has received approval from the department subsequent to its conduct of a criminal history record check as authorized in s. 493.6108(1) ~~493.6121(6)~~.

(16) If the criminal history record check program referenced in s. 493.6108(1) ~~493.6121(6)~~ is inoperable, the department may issue a temporary "G" license on a case-by-case basis, provided that the applicant has met all statutory requirements for the issuance of a temporary "G" license as specified in subsection (12), excepting the criminal history record check stipulated there; provided, that the department requires that the licensed employer of the applicant conduct a criminal history record check of the applicant pursuant to standards set forth in rule by the department, and provide to the department an affidavit containing such information and statements as required by the department, including a statement that the criminal history record check did not indicate the existence of any criminal history that would prohibit licensure. Failure to properly conduct such a check, or knowingly providing incorrect or misleading information or statements in the affidavit constitutes ~~shall constitute~~ grounds for disciplinary action against the licensed agency, including revocation of



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license.

Section 14. Present paragraph (u) of subsection (1) of section 493.6118, Florida Statutes, is redesignated as paragraph (v), and a new paragraph (u) is added to that subsection to read:

493.6118 Grounds for disciplinary action.—

(1) The following constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any licensee, agency, or applicant regulated by this chapter, or any unlicensed person engaged in activities regulated under this chapter.

(u) For a Class "G" or a Class "K" applicant or licensee, being prohibited from purchasing or possessing a firearm by state or federal law.

Section 15. Present subsections (7) and (8) of section 493.6121, Florida Statutes, are renumbered as subsections (6) and (7), respectively, and subsection (6) of that section is amended, to read:

493.6121 Enforcement; investigation.—

~~(6) The department shall be provided access to the program that is operated by the Department of Law Enforcement, pursuant to s. 790.065, for providing criminal history record information to licensed gun dealers, manufacturers, and exporters. The department may make inquiries, and shall receive responses in the same fashion as provided under s. 790.065. The department shall be responsible for payment to the Department of Law Enforcement of the same fees as charged to others afforded access to the program.~~

Section 16. Subsection (3) of section 493.6202, Florida



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Statutes, is amended to read:

493.6202 Fees.—

(3) The fees set forth in this section must be paid by ~~certified~~ check or money order or, at the discretion of the department, by electronic funds transfer ~~agency check~~ at the time the application is approved, except that the applicant for a Class "G," Class "C," Class "CC," Class "M," or Class "MA" license must pay the license fee at the time the application is made. If a license is revoked or denied or if the application is withdrawn, the license fee is nonrefundable ~~shall not be refunded~~.

Section 17. Subsections (2), (4), and (6) of section 493.6203, Florida Statutes, are amended to read:

493.6203 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

(2) An applicant for a Class "MA" license must ~~shall~~ have 2 years of lawfully gained, verifiable, full-time experience, or training in:

(a) Private investigative work or related fields of work that provided equivalent experience or training;

(b) Work as a Class "CC" licensed intern;

(c) Any combination of paragraphs (a) and (b);

(d) Experience described in paragraph (a) for 1 year and experience described in paragraph (e) for 1 year;

(e) No more than 1 year using:

1. College coursework related to criminal justice, criminology, or law enforcement administration; or



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2. Successfully completed law enforcement-related training received from any federal, state, county, or municipal agency; or

(f) Experience described in paragraph (a) for 1 year and work in a managerial or supervisory capacity for 1 year.

However, experience in performing bodyguard services is not creditable toward the requirements of this subsection.

(4) An applicant for a Class "C" license shall have 2 years of lawfully gained, verifiable, full-time experience, or training in one, or a combination of more than one, of the following:

(a) Private investigative work or related fields of work that provided equivalent experience or training.

(b) College coursework related to criminal justice, criminology, or law enforcement administration, or successful completion of any law enforcement-related training received from any federal, state, county, or municipal agency, except that no more than 1 year may be used from this category.

(c) Work as a Class "CC" licensed intern.

However, experience in performing bodyguard services is not creditable toward the requirements of this subsection.

(6) (a) A Class "CC" licensee must ~~shall~~ serve an internship under the direction and control of a designated sponsor, who is a Class "C," Class "MA," or Class "M" licensee.

(b) Effective January 1, 2012 ~~September 1, 2008~~, before submission of an application to the department, the an applicant for a Class "CC" license must have completed a minimum of 40 at



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535 ~~least 24 hours of professional training a 40-hour course~~
536 pertaining to general investigative techniques and this chapter,
537 which course is offered by a state university or by a school,
538 community college, college, or university under the purview of
539 the Department of Education, and the applicant must pass an
540 examination. The training must be provided in two parts, one 24-
541 hour course and one 16-hour course. The certificate evidencing
542 satisfactory completion of the 40 ~~at least 24 hours of~~
543 ~~professional training a 40-hour course~~ must be submitted with
544 the application for a Class "CC" license. ~~The remaining 16 hours~~
545 ~~must be completed and an examination passed within 180 days. If~~
546 ~~documentation of completion of the required training is not~~
547 ~~submitted within the specified timeframe, the individual's~~
548 ~~license is automatically suspended or his or her authority to~~
549 ~~work as a Class "CC" pursuant to s. 493.6105(9) is rescinded~~
550 ~~until such time as proof of certificate of completion is~~
551 ~~provided to the department.~~ The training course specified in
552 this paragraph may be provided by face-to-face presentation,
553 online technology, or a home study course in accordance with
554 rules and procedures of the Department of Education. The
555 administrator of the examination must verify the identity of
556 each applicant taking the examination.

557 1. Upon an applicant's successful completion of each part
558 of the approved training ~~course~~ and passage of any required
559 examination, the school, community college, college, or
560 university shall issue a certificate of completion to the
561 applicant. The certificates must be on a form established by
562 rule of the department.

563 2. The department shall establish by rule the general



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content of the professional training ~~course~~ and the examination criteria.

3. If the license of an applicant for relicensure is ~~has been~~ invalid for more than 1 year, the applicant must complete the required training and pass any required examination.

(c) An individual who submits an application for a Class "CC" license on or after September 1, 2008, through December 31, 2011, who has not completed the 16-hour course must submit proof of successful completion of the course within 180 days after the date the application is submitted. If documentation of completion of the required training is not submitted by that date, the individual's license shall be automatically suspended until proof of the required training is submitted to the department. An individual licensed on or before August 31, 2008, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies.

Section 18. Subsection (3) of section 493.6302, Florida Statutes, is amended to read:

493.6302 Fees.—

(3) The fees set forth in this section must be paid by ~~certified~~ check or money order or, at the discretion of the department, by electronic funds transfer ~~agency check~~ at the time the application is approved, except that the applicant for a Class "D," Class "G," Class "M," or Class "MB" license must pay the license fee at the time the application is made. If a license is revoked or denied or if the application is withdrawn, the license fee is nonrefundable ~~shall not be refunded~~.



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Section 19. Subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency must ~~shall~~ comply with the following additional requirements:

(4) (a) Effective January 1, 2012, an applicant for a Class "D" license must submit proof of successful completion of ~~complete~~ a minimum of 40 hours of professional training at a school or training facility licensed by the department. The training must be provided in two parts, one 24-hour course and one 16-hour course. The department shall by rule establish the general content and number of hours of each subject area to be taught.

(b) An individual who submits an application for a Class "D" license on or after January 1, 2007, through December 31, 2011, who has not completed the 16-hour course must submit proof of successful completion of the course within 180 days after the date the application is submitted. If documentation of completion of the required training is not submitted by that date, the individual's license shall be automatically suspended until proof of the required training is submitted to the department. A person licensed before January 1, 2007, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies. An applicant may fulfill the training requirement prescribed in paragraph (a) by submitting proof of:
1. Successful completion of the total number of required



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~~hours of training before initial application for a Class "D" license; or~~

~~2. Successful completion of 24 hours of training before initial application for a Class "D" license and successful completion of the remaining 16 hours of training within 180 days after the date that the application is submitted. If documentation of completion of the required training is not submitted within the specified timeframe, the individual's license is automatically suspended until such time as proof of the required training is provided to the department.~~

~~(c) An individual However, any person whose license is suspended or has been revoked, suspended pursuant to paragraph (b) subparagraph 2., or is expired for at least 1 year, or longer is considered, upon reapplication for a license, an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department as provided prescribed in paragraph (a) before a license is will be issued. Any person whose license was issued before January 1, 2007, and whose license has been expired for less than 1 year must, upon reapplication for a license, submit documentation of completion of the total number of hours of training prescribed by law at the time her or his initial license was issued before another license will be issued. This subsection does not require an individual licensed before January 1, 2007, to complete additional training hours in order to renew an active license, beyond the required total amount of training within the timeframe prescribed by law at the time she or he was licensed.~~

Section 20. Subsection (2) of section 493.6304, Florida



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Statutes, is amended to read:

493.6304 Security officer school or training facility.—

(2) The application shall be signed and verified by the applicant under oath as provided in s. 92.525 ~~notarized~~ and must ~~shall~~ contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, her or his name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted.

(c) A copy of the training curriculum and final examination to be administered.

Section 21. Subsections (7) and (8) of section 493.6401, Florida Statutes, are amended to read:

493.6401 Classes of licenses.—

(7) Any person who operates a recovery agent ~~repossessor~~ school or training facility or who conducts an Internet-based training course or a correspondence training course must have a Class "RS" license.

(8) Any individual who teaches or instructs at a Class "RS" recovery agent ~~repossessor~~ school or training facility shall have a Class "RI" license.

Section 22. Subsections (1) and (3) of section 493.6402, Florida Statutes, are amended to read:

493.6402 Fees.—

(1) The department shall establish by rule biennial license fees that ~~which~~ shall not exceed the following:

(a) Class "R" license—recovery agency: \$450.

(b) Class "RR" license—branch office: \$125.



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(c) Class "MR" license-recovery agency manager: \$75.

(d) Class "E" license-recovery agent: \$75.

(e) Class "EE" license-recovery agent intern: \$60.

(f) Class "RS" license-recovery agent ~~license-repossessor~~
school or training facility: \$60.

(g) Class "RI" license-recovery agent ~~license-repossessor~~
school or training facility instructor: \$60.

(3) The fees set forth in this section must be paid by
~~certified~~ check or money order, or, at the discretion of the
department, by or electronic funds transfer ~~agency check~~ at the
time the application is approved, except that the applicant for
a Class "E," Class "EE," or Class "MR" license must pay the
license fee at the time the application is made. If a license is
revoked or denied, or if an application is withdrawn, the
license fee is nonrefundable ~~shall not be refunded~~.

Section 23. Section 493.6406, Florida Statutes, is amended
to read:

493.6406 Recovery agent ~~Repossession services~~ school or
training facility.—

(1) Any school, training facility, or instructor who offers
the training outlined in s. 493.6403(2) for Class "E" or Class
"EE" applicants shall, before licensure of such school, training
facility, or instructor, file with the department an application
accompanied by an application fee in an amount to be determined
by rule, not to exceed \$60. The fee shall not be refundable.
This training may be offered as face-to-face training, Internet-
based training, or correspondence training.

(2) The application must ~~shall~~ be signed and verified by
the applicant under oath as provided in s. 92.525 ~~notarized~~ and



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shall contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, his or her name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted or the street address of the Class "RS" school offering Internet-based or correspondence training.

(c) A copy of the training curriculum and final examination to be administered.

(3) The department shall adopt rules establishing the criteria for approval of schools, training facilities, and instructors.

Section 24. Subsection (7) of section 496.404, Florida Statutes, is amended to read:

496.404 Definitions.—As used in ss. 496.401-496.424:

(7) "Division" means the Division of Consumer Protection ~~services~~ of the Department of Agriculture and Consumer Services.

Section 25. Subsection (3) of section 496.411, Florida Statutes, is amended to read:

496.411 Disclosure requirements and duties of charitable organizations and sponsors.—

(3) Every charitable organization or sponsor that ~~which~~ is required to register under s. 496.405 must conspicuously display in capital letters the following statement on every printed solicitation, written confirmation, receipt, or reminder of a contribution:

"A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF



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738 CONSUMER PROTECTION SERVICES BY CALLING TOLL-FREE
739 WITHIN THE STATE. REGISTRATION DOES NOT IMPLY
740 ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE
741 STATE.”
742

743 The statement must include a toll-free number for the division
744 which ~~that~~ can be used to obtain the registration information.
745 When the solicitation consists of more than one piece, the
746 statement must be displayed prominently in the solicitation
747 materials.

748 Section 26. Paragraph (c) of subsection (1) of section
749 496.412, Florida Statutes, is amended to read:

750 496.412 Disclosure requirements and duties of professional
751 solicitors.—

752 (1) A professional solicitor must comply with and be
753 responsible for complying or causing compliance with the
754 following disclosures:

755 (c) In addition to the information required by paragraph
756 (a), any written confirmation, receipt, or reminder of
757 contribution made pursuant to an oral solicitation and any
758 written solicitation shall conspicuously state in capital
759 letters:

760
761 “A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL
762 INFORMATION MAY BE OBTAINED FROM THE DIVISION OF
763 CONSUMER PROTECTION SERVICES BY CALLING TOLL-FREE
764 WITHIN THE STATE. REGISTRATION DOES NOT IMPLY
765 ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE
766 STATE.”



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The statement must include a toll-free number for the division which ~~that~~ can be used to obtain the registration information. When the solicitation consists of more than one piece, the statement must be displayed prominently in the solicitation materials.

Section 27. Subsection (5) of section 496.419, Florida Statutes, is amended to read:

496.419 Powers of the department.—

(5) Upon a finding as set forth in subsection (4), the department may ~~enter an order doing one or more of the following:~~

(a) Issue ~~Issuing~~ a notice of noncompliance pursuant to s. 120.695;

(b) Issue ~~Issuing~~ a cease and desist order that directs that the person cease and desist specified fundraising activities;

(c) Refuse ~~Refusing~~ to register or revoke ~~canceling~~ or suspend ~~suspending~~ a registration;

(d) Place ~~Placing~~ the registrant on probation for a period of time, subject to such conditions as the department may specify;

(e) Revoke ~~Canceling~~ an exemption granted under s. 496.406; or ~~and~~

(f) Impose ~~Imposing~~ an administrative fine not to exceed \$1,000 for each act or omission that ~~which~~ constitutes a violation of ss. 496.401-496.424 or s. 496.426 or a rule or order.



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With respect to a s. 501(c)(3) organization, the penalty imposed pursuant to this subsection may ~~shall~~ not exceed \$500 per violation. The penalty shall be the entire amount per violation and is not ~~to be interpreted as~~ a daily penalty.

Section 28. Subsection (7) of section 501.015, Florida Statutes, is amended to read:

501.015 Health studios; registration requirements and fees.—Each health studio shall:

(7) ~~Any person applying for or renewing a local occupational license to engage in business as a health studio~~ ~~must~~ Exhibit an active registration certificate from the Department of Agriculture and Consumer Services before the local business tax receipt ~~occupational license~~ may be issued or reissued.

Section 29. Subsection (1) of section 501.017, Florida Statutes, is amended to read:

501.017 Health studios; contracts.—

(1) Every contract for the sale of future health studio services which is paid for in advance or which the buyer agrees to pay for in future installment payments must ~~shall~~ be in writing and must ~~shall~~ contain, contractual provisions to the contrary notwithstanding, in immediate proximity to the space reserved in the contract for the signature of the buyer, and in at least 10-point boldfaced type, language substantially equivalent to the following:

(a) A provision for the penalty-free cancellation of the contract within 3 days, exclusive of holidays and weekends, of its making, upon the mailing or delivery of written notice to the health studio, and refund upon such notice of all moneys



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paid under the contract, except that the health studio may retain an amount computed by dividing the number of complete days in the contract term or, if appropriate, the number of occasions health studio services are to be rendered into the total contract price and multiplying the result by the number of complete days that have passed since the making of the contract or, if appropriate, by the number of occasions that health studio services have been rendered. A refund shall be issued within 30 days after receipt of the notice of cancellation made within the 3-day provision.

(b)1. A provision for the cancellation and refund of the contract if the contracting business location of the health studio goes out of business, or moves its facilities more than 5 driving miles from the business location designated in such contract and fails to provide, within 30 days, a facility of equal quality located within 5 driving miles of the business location designated in such contract at no additional cost to the buyer.

2. A provision that notice of intent to cancel by the buyer shall be given in writing to the health studio. Such a notice of cancellation from the consumer shall also terminate automatically the consumer's obligation to any entity to whom the health studio has subrogated or assigned the consumer's contract. If the health studio wishes to enforce such contract after receipt of such showing, it may request the department to determine the sufficiency of the showing.

3. A provision that if the department determines that a refund is due the buyer, the refund shall be an amount computed by dividing the contract price by the number of weeks in the



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contract term and multiplying the result by the number of weeks remaining in the contract term. The business location of a health studio is ~~shall~~ not ~~be~~ deemed out of business when temporarily closed for repair and renovation of the premises:

- a. Upon sale, for not more than 14 consecutive days; or
- b. During ownership, for not more than 7 consecutive days and not more than two periods of 7 consecutive days in any calendar year.

A refund shall be issued within 30 days after receipt of the notice of cancellation made pursuant to this paragraph.

(c) A provision in the disclosure statement advising the buyer to contact the department for information within 60 days should the health studio go out of business.

(d) A provision for the cancellation of the contract if the buyer dies or becomes physically unable to avail himself or herself of a substantial portion of those services which he or she used from the commencement of the contract until the time of disability, with refund of funds paid or accepted in payment of the contract in an amount computed by dividing the contract price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the contract term. The contract may require a buyer or the buyer's estate seeking relief under this paragraph to provide proof of disability or death. A physical disability sufficient to warrant cancellation of the contract by the buyer shall be established if the buyer furnishes to the health studio a certification of such disability by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 to the extent the



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diagnosis or treatment of the disability is within the physician's scope of practice. A refund shall be issued within 30 days after receipt of the notice of cancellation made pursuant to this paragraph.

(e) A provision that the initial contract will not be for a period in excess of 36 months, and thereafter shall only be renewable annually. Such renewal contracts may not be executed and the fee therefor paid until 60 days or less before the preceding contract expires.

(f) A provision that if the health studio requires a buyer to furnish identification upon entry to the facility and as a condition of using the services of the health studio, the health studio must ~~shall~~ provide the buyer with the means of such identification.

Section 30. Subsection (2) of section 501.145, Florida Statutes, is amended to read

501.145 Bedding Label Act.—

(2) DEFINITIONS.—For the purpose of this section, the term:

(a) "Bedding" means any mattress, box spring, pillow, or cushion made of leather or any other material which is or can be stuffed or filled in whole or in part with any substance or material, which can be used by any human being for sleeping or reclining purposes.

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

(b) ~~(c)~~ "Enforcing authority" means the Department of Agriculture and Consumer Services or the Department of Legal Affairs.

Section 31. Subsection (8) of section 501.160, Florida



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Statutes, is amended to read:

501.160 Rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices.—

(8) Any violation of this section may be enforced by the ~~Department of Agriculture and Consumer Services,~~ the office of the state attorney~~7~~ or the Department of Legal Affairs.

Section 32. Paragraph (a) and paragraph (1) of subsection (2) of section 501.605, Florida Statutes, is amended to read:

501.605 Licensure of commercial telephone sellers.—

(2) An applicant for a license as a commercial telephone seller must submit to the department, in such form as it prescribes, a written application for the license. The application must set forth the following information:

(a) The true name, date of birth, driver's license number, or other valid form of identification, ~~social security number,~~ and home address of the applicant, including each name under which he or she intends to do business.

The application shall be accompanied by a copy of any: Script, outline, or presentation the applicant will require or suggest a salesperson to use when soliciting, or, if no such document is used, a statement to that effect; sales information or literature to be provided by the applicant to a salesperson; and sales information or literature to be provided by the applicant to a purchaser in connection with any solicitation.

(1) The true name, current home address, date of birth, ~~social security number,~~ and all other names by which known, or previously known, of each:



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1. Principal officer, director, trustee, shareholder, owner, or partner of the applicant, and of each other person responsible for the management of the business of the applicant.

2. Office manager or other person principally responsible for a location from which the applicant will do business.

3. Salesperson or other person to be employed by the applicant.

The application shall be accompanied by a copy of any: Script, outline, or presentation the applicant will require or suggest a salesperson to use when soliciting, or, if no such document is used, a statement to that effect; sales information or literature to be provided by the applicant to a salesperson; and sales information or literature to be provided by the applicant to a purchaser in connection with any solicitation.

Section 33. Paragraph (a) of subsection (1) of section 501.607, Florida Statutes, is amended to read:

501.607 Licensure of salespersons.—

(1) An applicant for a license as a salesperson must submit to the department, in such form as it prescribes, a written application for a license. The application must set forth the following information:

(a) The true name, date of birth, driver's license number or other valid form of identification, ~~social security number,~~ and home address of the applicant.

Section 34. Paragraph (f) of subsection (3) of section 539.001, Florida Statutes, is amended to read

539.001 The Florida Pawnbroking Act.—

(3) LICENSE REQUIRED.—



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(f) Any person applying for or renewing a local occupational license to engage in business as a pawnbroker must exhibit a current license from the agency before the local occupational license may be issued or reissued.

Section 35. Subsection (1) of section 559.805, Florida Statutes, is amended to read:

559.805 Filings with the department; disclosure of advertisement identification number.—

(1) Every seller of a business opportunity shall annually file with the department a copy of the disclosure statement required by s. 559.803 before ~~prior to~~ placing an advertisement or making any other representation designed to offer to, sell to, or solicit an offer to buy a business opportunity from a prospective purchaser in this state and must ~~shall~~ update this filing by reporting any material change in the required information within 30 days after the material change occurs. An advertisement is not considered to be placed in the state merely because the advertisement is published in a ~~publisher circulates, or there is circulated on his or her behalf in the state, any bona fide~~ newspaper or other publication having a ~~of~~ general, regular, and paid circulation in this state which has had more than two-thirds of its circulation during the past 12 months outside the state or because the advertisement is received in this state from a radio or television program originating outside the state ~~is received in the state~~. If the seller is required by s. 559.807 to provide a bond or establish a trust account or guaranteed letter of credit, the seller ~~he or she~~ shall contemporaneously file with the department a copy of the bond, a copy of the formal notification by the depository



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that the trust account is established, or a copy of the guaranteed letter of credit. Every seller of a business opportunity must ~~shall~~ file with the department a list of independent agents who will engage in the offer or sale of business opportunities on behalf of the seller in this state. This list must be kept current and must ~~shall~~ include the following information: name, home and business address, telephone number, present employer, ~~social security number~~, and birth date. A No person may not ~~shall be allowed to~~ offer or sell business opportunities unless the required information has been provided to the department.

Section 36. Subsection (7) of section 559.904, Florida Statutes, is amended to read:

559.904 Motor vehicle repair shop registration; application; exemption.—

(7) Any person applying for or renewing a local business tax receipt ~~occupational license on or after October 1, 1993~~, to engage in business as a motor vehicle repair shop must exhibit an active registration certificate from the department before the local business tax receipt ~~occupational license~~ may be issued or renewed.

Section 37. Subsections (1), (3), and (4) of section 559.928, Florida Statutes, are amended to read

559.928 Registration.—

(1) Each seller of travel shall annually register with the department, providing: its legal business or trade name, mailing address, and business locations; the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation; a statement



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whether it is a domestic or foreign corporation, its state and date of incorporation, its charter number, and, if a foreign corporation, the date it registered with the State of Florida, and local business tax receipt ~~occupational license~~ where applicable; the date on which a seller of travel registered its fictitious name if the seller of travel is operating under a fictitious or trade name; the name of all other corporations, business entities, and trade names through which each owner of the seller of travel operated, was known, or did business as a seller of travel within the preceding 5 years; a list of all authorized independent agents, including the agent's trade name, full name, mailing address, business address, and telephone numbers; the business location and address of each branch office and full name and address of the manager or supervisor; the certification required under s. 559.9285; and proof of purchase of adequate bond as required in this part. A certificate evidencing proof of registration shall be issued by the department and must be prominently displayed in the seller of travel's primary place of business.

(3) Each independent agent shall annually file an affidavit with the department prior to engaging in business in this state. This affidavit must include the independent agent's full name, legal business or trade name, mailing address, business address, telephone number, ~~social security number~~, and the name or names and addresses of each seller of travel represented by the independent agent. A letter evidencing proof of filing must be issued by the department and must be prominently displayed in the independent agent's primary place of business. Each independent agent must also submit an annual registration fee of



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\$50. All moneys collected pursuant to the imposition of the fee shall be deposited by the Chief Financial Officer into the General Inspection Trust Fund of the Department of Agriculture and Consumer Services for the sole purpose of administering this part. As used in this subsection, the term "independent agent" means a person who represents a seller of travel by soliciting persons on its behalf; who has a written contract with a seller of travel which is operating in compliance with this part and any rules adopted thereunder; who does not receive a fee, commission, or other valuable consideration directly from the purchaser for the seller of travel; who does not at any time have any unissued ticket stock or travel documents in his or her possession; and who does not have the ability to issue tickets, vacation certificates, or any other travel document. The term "independent agent" does not include an affiliate of the seller of travel, as that term is used in s. 559.935(3), or the employees of the seller of travel or of such affiliates.

(4) Any person applying for or renewing a local business tax receipt ~~occupational license~~ to engage in business as a seller of travel must exhibit a current registration certificate from the department before the local business tax receipt ~~occupational license~~ may be issued or reissued.

Section 38. Subsection (6) of section 559.935, Florida Statutes, is amended to read

559.935 Exemptions.—

(6) The department shall request from the Airlines Reporting Corporation any information necessary to implement the provisions of subsection (2). Persons claiming an exemption under subsection (2) or subsection (3) must show a letter of



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exemption from the department before a local business tax receipt ~~occupational license~~ to engage in business as a seller of travel may be issued or reissued. If the department fails to issue a letter of exemption on a timely basis, the seller of travel shall submit to the department, through certified mail, an affidavit containing her or his name and address and an explanation of the exemption sought. Such affidavit may be used in lieu of a letter of exemption for the purpose of obtaining a business tax receipt ~~an occupational license~~. In any civil or criminal proceeding, the burden of proving an exemption under this section shall be on the person claiming such exemption. A letter of exemption issued by the department shall not be used in, and shall have no bearing on, such proceedings.

Section 39. Subsection (5) of section 570.29, Florida Statutes, is amended to read

570.29 Departmental divisions.—The department shall include the following divisions:

(5) Consumer Protection Services ~~Services~~.

Section 40. Section 570.544, Florida Statutes, is amended to read:

570.544 Division of Consumer Protection Services ~~Services~~; director; powers; processing of complaints; records.—

(1) The director of the Division of Consumer Protection Services ~~Services~~ shall be appointed by and serve at the pleasure of the commissioner.

(2) The Division of Consumer Protection Services ~~Services~~ may:

(a) Conduct studies and make analyses of matters affecting the interests of consumers.

(b) Study the operation of laws for consumer protection.



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(c) Advise and make recommendations to the various state agencies concerned with matters affecting consumers.

(d) Assist, advise, and cooperate with local, state, or federal agencies and officials in order to promote the interests of consumers.

(e) Make use of the testing and laboratory facilities of the department for the detection of consumer fraud.

(f) Report to the appropriate law enforcement officers any information concerning violation of consumer protection laws.

(g) Assist, develop, and conduct programs of consumer education and consumer information through publications and other informational and educational material prepared for dissemination to the public, in order to increase the competence of consumers.

(h) Organize and hold conferences on problems affecting consumers.

(i) Recommend programs to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale of consumer goods and services.

(3) In addition to the powers, duties, and responsibilities authorized by this or any other chapter, the Division of Consumer Protection Services ~~Services~~ shall serve as a clearinghouse for matters relating to consumer protection, consumer information, and consumer services generally. It shall receive complaints and grievances from consumers and promptly transmit them to that agency most directly concerned in order that the complaint or grievance may be expeditiously handled in the best interests of the complaining consumer. If no agency exists, the Division of



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Consumer Protection Services shall seek a settlement of the complaint using formal or informal methods of mediation and conciliation and may seek any other resolution of the matter in accordance with its jurisdiction.

(4) If any complaint received by the Division of Consumer Protection Services concerns matters that ~~which~~ involve concurrent jurisdiction in more than one agency, duplicate copies of the complaint shall be referred to those offices deemed to have concurrent jurisdiction.

(5) (a) Any agency, office, bureau, division, or board of state government receiving a complaint that ~~which~~ deals with consumer fraud or consumer protection and ~~which~~ is not within the jurisdiction of the receiving agency, office, bureau, division, or board originally receiving it, shall immediately refer the complaint to the Division of Consumer Protection Services.

(b) Upon receipt of such a complaint, the Division of Consumer Protection Services shall make a determination of the proper jurisdiction to which the complaint relates and shall immediately refer the complaint to the agency, office, bureau, division, or board that has ~~which does have~~ the proper regulatory or enforcement authority to deal with it.

(6) The office or agency to which a complaint has been referred shall within 30 days acknowledge receipt of the complaint. If an office or agency receiving a complaint determines that the matter presents a prima facie case for criminal prosecution or if the complaint cannot be settled at the administrative level, the complaint together with all supporting evidence shall be transmitted to the Department of



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Legal Affairs or other appropriate enforcement agency with a recommendation for civil or criminal action warranted by the evidence.

(7) The records of the Division of Consumer Protection ~~Services~~ are public records. However, customer lists, customer names, and trade secrets are confidential and exempt from the provisions of s. 119.07(1). Disclosure necessary to enforcement procedures does ~~shall~~ not violate ~~be construed as violative of~~ this prohibition on the disclosure of confidential information.

(8) ~~It shall be the duty of~~ The Division of Consumer Protection shall ~~Services to~~ maintain records and compile summaries and analyses of consumer complaints and their eventual disposition, which data may serve as a basis for recommendations to the Legislature and to state regulatory agencies.

Section 41. Subsection (7) of section 681.102, Florida Statutes, is amended, and present subsections (8) through (23) of that subsection are renumbered as subsections (7) through (22), respectively, to read:

681.102 Definitions.—As used in this chapter, the term:

~~(7) "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.~~

Section 42. Subsection (3) of section 681.103, Florida Statutes, is amended to read:

681.103 Duty of manufacturer to conform a motor vehicle to the warranty.—

(3) At the time of acquisition, the manufacturer shall inform the consumer clearly and conspicuously in writing how and where to file a claim with a certified procedure if such procedure has been established by the manufacturer pursuant to



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s. 681.108. The nameplate manufacturer of a recreational vehicle shall, at the time of vehicle acquisition, inform the consumer clearly and conspicuously in writing how and where to file a claim with a program pursuant to s. 681.1096. The manufacturer shall provide to the dealer and, at the time of acquisition, the dealer shall provide to the consumer a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the Department of Legal Affairs and shall contain a toll-free number for the department which ~~division that~~ the consumer can contact to obtain information regarding the consumer's rights and obligations under this chapter or to commence arbitration. If the manufacturer obtains a signed receipt for timely delivery of sufficient quantities of this written statement to meet the dealer's vehicle sales requirements, it shall constitute prima facie evidence of compliance with this subsection by the manufacturer. The consumer's signed acknowledgment of receipt of materials required under this subsection shall constitute prima facie evidence of compliance by the manufacturer and dealer. The form of the acknowledgments shall be approved by the Department of Legal Affairs, and the dealer shall maintain the consumer's signed acknowledgment for 3 years.

Section 43. Section 681.108, Florida Statutes, is amended to read:

681.108 Dispute-settlement procedures.—

(1) If a manufacturer has established a procedure that, ~~which~~ the department ~~division~~ has certified as substantially complying with the provisions of 16 C.F.R. part 703, in effect October 1, 1983, and with the provisions of this chapter and the



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rules adopted under this chapter, and has informed the consumer how and where to file a claim with such procedure pursuant to s. 681.103(3), the provisions of s. 681.104(2) apply to the consumer only if the consumer has first resorted to such procedure. The decisionmakers for a certified procedure shall, in rendering decisions, take into account all legal and equitable factors germane to a fair and just decision, including, but not limited to, the warranty; the rights and remedies conferred under 16 C.F.R. part 703, in effect October 1, 1983; the provisions of this chapter; and any other equitable considerations appropriate under the circumstances.

Decisionmakers and staff of a procedure shall be trained in the provisions of this chapter and in 16 C.F.R. part 703, in effect October 1, 1983. In an action brought by a consumer concerning an alleged nonconformity, the decision that results from a certified procedure is admissible in evidence.

(2) A manufacturer may apply to the department ~~division~~ for certification of its procedure. After receipt and evaluation of the application, the department ~~division~~ shall certify the procedure or notify the manufacturer of any deficiencies in the application or the procedure.

(3) A certified procedure or a procedure of an applicant seeking certification shall submit to the department ~~division~~ a copy of each settlement approved by the procedure or decision made by a decisionmaker within 30 days after the settlement is reached or the decision is rendered. The decision or settlement must contain at a minimum the:

(a) Name and address of the consumer;

(b) Name of the manufacturer and address of the dealership



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from which the motor vehicle was purchased;

(c) Date the claim was received and the location of the procedure office that handled the claim;

(d) Relief requested by the consumer;

(e) Name of each decisionmaker rendering the decision or person approving the settlement;

(f) Statement of the terms of the settlement or decision;

(g) Date of the settlement or decision; and

(h) Statement of whether the decision was accepted or rejected by the consumer.

(4) Any manufacturer establishing or applying to establish a certified procedure must file with the department ~~division~~ a copy of the annual audit required under the provisions of 16 C.F.R. part 703, in effect October 1, 1983, together with any additional information required for purposes of certification, including the number of refunds and replacements made in this state pursuant to the provisions of this chapter by the manufacturer during the period audited.

(5) The department ~~division~~ shall review each certified procedure at least annually, prepare an annual report evaluating the operation of certified procedures established by motor vehicle manufacturers and procedures of applicants seeking certification, and, for a period not to exceed 1 year, shall grant certification to, or renew certification for, those manufacturers whose procedures substantially comply with the provisions of 16 C.F.R. part 703, in effect October 1, 1983, and with the provisions of this chapter and rules adopted under this chapter. If certification is revoked or denied, the department ~~division~~ shall state the reasons for such action. The reports



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and records of actions taken with respect to certification shall be public records.

(6) A manufacturer whose certification is denied or revoked is entitled to a hearing pursuant to chapter 120.

(7) If federal preemption of state authority to regulate procedures occurs, the provisions of subsection (1) concerning prior resort do not apply.

(8) The department may ~~division shall~~ adopt rules to administer ~~implement~~ this section.

Section 44. Section 681.109, Florida Statutes, is amended to read:

681.109 Florida New Motor Vehicle Arbitration Board; dispute eligibility.—

(1) If a manufacturer has a certified procedure, a consumer claim arising during the Lemon Law rights period must be filed with the certified procedure no later than 60 days after the expiration of the Lemon Law rights period. If a decision is not rendered by the certified procedure within 40 days of filing, the consumer may apply to the department ~~division~~ to have the dispute removed to the board for arbitration.

(2) If a manufacturer has a certified procedure, a consumer claim arising during the Lemon Law rights period must be filed with the certified procedure within ~~no later than~~ 60 days after the expiration of the Lemon Law rights period. If a consumer is not satisfied with the decision or the manufacturer's compliance therewith, the consumer may apply to the department ~~division~~ to have the dispute submitted to the board for arbitration. A manufacturer may not seek review of a decision made under its procedure.



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(3) If a manufacturer does not have a ~~has no~~ certified procedure or if the ~~a~~ certified procedure does not have jurisdiction to resolve the dispute, a consumer may apply directly to the department ~~division~~ to have the dispute submitted to the board for arbitration.

(4) A consumer must request arbitration before the board with respect to a claim arising during the Lemon Law rights period no later than 60 days after the expiration of the Lemon Law rights period, or within 30 days after the final action of a certified procedure, whichever date occurs later.

(5) The department ~~division~~ shall screen all requests for arbitration before the board to determine eligibility. The consumer's request for arbitration before the board shall be made on a form prescribed by the department. The department ~~division~~ shall forward to the board all disputes that the department ~~division~~ determines are potentially entitled to relief under this chapter.

(6) The department ~~division~~ may reject a dispute that it determines to be fraudulent or outside the scope of the board's authority. Any dispute deemed by the department ~~division~~ to be ineligible for arbitration by the board due to insufficient evidence may be reconsidered upon the submission of new information regarding the dispute. Following a second review, the department ~~division~~ may reject a dispute if the evidence is clearly insufficient to qualify for relief. If the department rejects a dispute, it must provide notice of the rejection and a brief explanation of the reason for rejection ~~Any dispute rejected by the division shall be forwarded to the department and a copy shall be sent by registered mail to the consumer and~~



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1347 ~~to the manufacturer, containing a brief explanation as to the~~
1348 ~~reason for rejection.~~

1349 (7) If the department ~~division~~ rejects a dispute, the
1350 consumer may file a lawsuit to enforce the remedies provided
1351 under this chapter. In any civil action arising under this
1352 chapter and relating to a matter considered by the department
1353 ~~division~~, any determination made to reject a dispute is
1354 admissible in evidence.

1355 (8) The department may ~~shall have the authority to~~ adopt
1356 ~~reasonable~~ rules to administer ~~carry out the provisions of this~~
1357 section.

1358 Section 45. Subsections (2), (3), (4), (5), (9), (11), and
1359 (12) of section 681.1095, Florida Statutes, are amended, and
1360 subsection (17) is added to that section, to read:

1361 681.1095 Florida New Motor Vehicle Arbitration Board;
1362 creation and function.—

1363 (2) The board ~~boards~~ shall hear cases in various locations
1364 throughout the state so that any consumer whose dispute is
1365 approved for arbitration by the department ~~division~~ may attend
1366 an arbitration hearing at a reasonably convenient location and
1367 present a dispute orally. Hearings shall be conducted by panels
1368 of three board members assigned by the department. A majority
1369 vote of the three-member board panel shall be required to render
1370 a decision. Arbitration proceedings under this section shall be
1371 open to the public on reasonable and nondiscriminatory terms.

1372 (3) Each region of the board shall consist of up to eight
1373 members. The members of the board shall construe and apply the
1374 provisions of this chapter, and rules adopted thereunder, in
1375 making their decisions. An administrator and a secretary shall



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be assigned to the each board by the Department of Legal Affairs. At least one member of the each board in each region must have ~~be a person with~~ expertise in motor vehicle mechanics. A member may ~~must~~ not be employed by a manufacturer or a franchised motor vehicle dealer or be a staff member, a decisionmaker, or a consultant for a procedure. Board members shall be trained in the application of this chapter and any rules adopted under this chapter. Members of the board, shall be ~~reimbursed for travel expenses pursuant to s. 112.061, and shall~~ ~~be~~ compensated at a rate or wage prescribed by the Attorney General and are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061.

(4) Before filing a civil action on a matter subject to s. 681.104, the consumer must first submit the dispute to the department ~~division~~, and to the board if such dispute is deemed eligible for arbitration.

(5) Manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by a consumer and the dispute is deemed eligible for arbitration by the department ~~division~~ pursuant to s. 681.109.

(9) The decision of the board shall be sent by any method providing a delivery confirmation ~~registered mail~~ to the consumer and the manufacturer, and shall contain written findings of fact and rationale for the decision. If the decision is in favor of the consumer, the manufacturer must, within 40 days after receipt of the decision, comply with the terms of the decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award. In any civil action



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arising under this chapter and relating to a dispute arbitrated before the board, any decision by the board is admissible in evidence.

(11) ~~All provisions in~~ This section and s. 681.109 pertaining to compulsory arbitration before the board, the dispute eligibility screening by the department division, the proceedings and decisions of the board, and any appeals thereof, are exempt from ~~the provisions of~~ chapter 120.

(12) An appeal of a decision by the board to the circuit court by a consumer or a manufacturer shall be by trial de novo. In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon for appeal. Within 15 ~~30~~ days after ~~of~~ final disposition of the appeal, the appealing party shall furnish the department with ~~notice of such disposition and, upon request,~~ shall furnish the department with a copy of the settlement or the order or judgment of the court.

(17) The department may adopt rules to administer this section.

Section 46. Subsection (2) of section 681.1096, Florida Statutes, is amended to read:

681.1096 RV Mediation and Arbitration Program; creation and qualifications.—

(2) Each manufacturer of a recreational vehicle involved in a dispute that is determined eligible under this chapter, including chassis and component manufacturers that ~~which~~ separately warrant the chassis and components and that ~~which~~ otherwise meet the definition of manufacturer set forth in s. 681.102(13) ~~681.102(14)~~, shall participate in a mediation and



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arbitration program that is deemed qualified by the department.

Section 47. Subsection (2) of section 681.112, Florida Statutes, is amended to read:

681.112 Consumer remedies.—

(2) An action brought under this chapter must be commenced within 1 year after the expiration of the Lemon Law rights period, or, if a consumer resorts to an informal dispute-settlement procedure or submits a dispute to the department ~~division~~ or board, within 1 year after the final action of the procedure, department ~~division~~, or board.

Section 48. Subsection (1) of section 681.117, Florida Statutes, is amended to read:

681.117 Fee.—

(1) A \$2 fee shall be collected by a motor vehicle dealer, or by a person engaged in the business of leasing motor vehicles, from the consumer at the consummation of the sale of a motor vehicle or at the time of entry into a lease agreement for a motor vehicle. Such fees shall be remitted to the county tax collector or private tag agency acting as agent for the Department of Revenue. If the purchaser or lessee removes the motor vehicle from the state for titling and registration outside this state, the fee shall be remitted to the Department of Revenue. ~~All fees, less the cost of administration, shall be transferred monthly to the Department of Legal Affairs for deposit into the Motor Vehicle Warranty Trust Fund. The Department of Legal Affairs shall distribute monthly an amount not exceeding one-fourth of the fees received to the Division of Consumer Services of the Department of Agriculture and Consumer Services to carry out the provisions of ss. 681.108 and 681.109.~~



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~~The Department of Legal Affairs shall contract with the Division of Consumer Services for payment of services performed by the division pursuant to ss. 681.108 and 681.109.~~

Section 49. Subsection (3) of section 849.0915, Florida Statutes, is amended to read:

849.0915 Referral selling.—

(3) In addition to the penalty provided herein, the Attorney General and her or his assistants, the state attorneys and their assistants, and the Division of Consumer Protection Services of the Department of Agriculture and Consumer Services are authorized to apply to the circuit court within their respective jurisdictions, and the ~~such~~ court has ~~shall have~~ jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating the provisions of this section, whether or not there exists an adequate remedy at law, and such injunction shall issue without bond.

Section 50. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending ss. 14.26, 20.14, 213.053, 320.275, and 366.85, F.S.; renaming the Division of Consumer Services within the department as the



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1492 "Division of Consumer Protection"; amending s. 320.90,
1493 F.S.; deleting a reference to the Department of
1494 Agriculture and Consumer Services; amending s.
1495 493.6105, F.S.; revising the information that a person
1496 must supply in an application for licensure as a
1497 private investigator, private security service, or
1498 repossession service; deleting a requirement that
1499 certain applicants supply photographs along with an
1500 application; revising the certificates that a person
1501 applying for a class "K" firearms instructor's license
1502 must supply along with an application for the license;
1503 making technical and grammatical changes; amending s.
1504 493.6106, F.S.; providing that applicants for certain
1505 licenses as a private investigator, private security
1506 service or repossession service must meet certain
1507 citizenship or immigration requirements and not be
1508 prohibited by law from purchasing a firearm; making
1509 grammatical and technical changes; amending s.
1510 493.6107, F.S.; authorizing a Class "M," Class "G,"
1511 and Class "K" licensee or applicant to pay examination
1512 fees and license fees by personal check or, if
1513 authorized by the department, by electronic funds
1514 transfer; amending s. 493.6108, F.S.; requiring the
1515 department to investigate the mental fitness of an
1516 applicant of a Class "K" firearms instructor license;
1517 amending s. 493.6111, F.S.; providing that Class "K"
1518 firearms instructor licenses are valid for 3 years;
1519 requiring an applicant for a recovery school or
1520 security officer school to receive approval from the



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department before operating under a fictitious name;
making technical and grammatical changes; amending s.
493.6113, F.S.; deleting a requirement that Class "A"
private investigative agency licensees and Class "R"
recovery agency licensees provide evidence of certain
insurance coverage with an application to renew a
license; requiring a Class "K" firearms instructor
licensee to submit proof of certification to provide
firearms instruction; amending s. 493.6115, F.S.;
conforming cross-references to changes made by the
act; making technical and grammatical changes;
amending s. 493.6118, F.S.; authorizing the department
to take disciplinary action against a Class "G"
statewide firearms licensee or applicant or a Class
"K" firearms instructor licensee or applicant if the
person is prohibited from purchasing a firearm by law;
amending s. 493.6121, F.S.; deleting a provision
authorizing the department to have access to certain
criminal history information of a purchaser of a
firearm; amending s. 493.6202, F.S.; authorizing a
Class "A," Class "AA," Class "MA," Class "C," or Class
"CC" licensee or applicant to pay examination fees and
license fees by personal check or, if authorized by
the department, by electronic funds transfer; amending
s. 493.6203, F.S.; providing that experience as a
bodyguard does not qualify as experience or training
for purposes of a Class "MA" or Class "C" license;
requiring an initial applicant for a Class "CC"
license to complete specified training courses; making



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1550 technical and grammatical changes and conforming a
1551 cross-reference; amending s. 493.6302, F.S.;
1552 authorizing a Class "B," Class "BB," Class "MB," Class
1553 "D," Class "DS," or Class "DI" licensee or applicant
1554 to pay examination fees and license fees by personal
1555 check or, if authorized by the department, by
1556 electronic funds transfer; amending s. 493.6303, F.S.;
1557 requiring an applicant for an initial Class "D"
1558 license to complete specified training courses; making
1559 technical and grammatical changes; amending s.
1560 493.6304, F.S.; requiring an application for a
1561 security officer school or training facility to be
1562 verified under oath; amending ss. 493.6401 and
1563 493.6402, F.S.; renaming reposessors as "recovery
1564 agents"; authorizing a Class "R," Class "RR," Class
1565 "MR," Class "E," Class "EE," Class "RS," or Class "RI"
1566 licensee or applicant to pay examination fees and
1567 license fees by personal check or, if authorized by
1568 the department, by electronic funds transfer; amending
1569 s. 493.6406, F.S.; requiring recovery agent schools or
1570 instructors to be licensed by the department to offer
1571 training to Class "E" licensees and applicants;
1572 amending ss. 496.404, 496.411, and 496.412, F.S.;
1573 renaming the Division of Consumer Services as the
1574 "Division of Consumer Protection"; amending s.
1575 496.419, F.S.; clarifying the powers of the department
1576 to enter an order; amending s. 501.015, F.S.;
1577 correcting a reference to a local business tax
1578 receipt; amending s. 501.017, F.S.; specifying the



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1579 minimum type size for requiring certain disclosures in
1580 contracts between a consumer and a health studio;
1581 amending s. 501.145, F.S.; deleting a reference to the
1582 department as an enforcing authority in the Bedding
1583 Label Act; amending s. 501.160, F.S.; deleting
1584 authorization for the department to enforce certain
1585 prohibitions against unconscionable practices during a
1586 declared state of emergency; amending s. 501.605,
1587 F.S.; deleting a requirement that a person supply his
1588 or her social security number on an application as a
1589 commercial telephone seller and adding requirement for
1590 other valid form of identification; amending s.
1591 501.607, F.S.; deleting a requirement that a person
1592 supply his or her social security number on an
1593 application as a salesperson; amending s. 526.06,
1594 F.S.; to delete reference to sale of gasoline blended
1595 with ethanol; amending s. 526.203, F.S.; altering the
1596 mixture of blended gasoline; amending s. 539.001,
1597 F.S.; correcting a reference to a local business tax
1598 receipt; amending s. 559.805, F.S.; deleting a
1599 requirement that a seller of a business opportunity
1600 provide the social security numbers of the seller's
1601 agents to the department; amending s. 559.904, F.S.;
1602 correcting a reference to a local business tax
1603 receipt; amending s. 559.928, F.S.; correcting a
1604 reference to a local business tax receipt; amending s.
1605 559.935, F.S.; correcting a reference to local
1606 business tax receipts; amending s. 570.29, F.S.;
1607 renaming the Division of Consumer Services as the



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1608 Division of Consumer Protection; amending s. 570.544,
1609 F.S.; renaming the Division of Consumer Services as
1610 the "Division of Consumer Protection"; amending s.
1611 681.102, F.S.; deleting a reference to the division in
1612 the Motor Vehicle Warranty Enforcement Act; amending
1613 ss. 681.103, 681.108, and 681.109, F.S.; transferring
1614 certain responsibilities under the Lemon Law to the
1615 department from the Division of Consumer Services;
1616 amending s. 681.1095, F.S.; transferring certain
1617 responsibilities relating to the New Motor Vehicle
1618 Arbitration Board to the department from the Division
1619 of Consumer Services; authorizing the board to send
1620 its decisions by any method providing a delivery
1621 confirmation; authorizing the department to adopt
1622 rules; amending s. 681.1096, F.S.; conforming a cross-
1623 reference to changes made by the act; amending s.
1624 681.112, F.S.; transferring certain responsibilities
1625 relating to the Lemon Law to the department from the
1626 Division of Consumer Services; amending s. 681.117,
1627 F.S.; deleting a provision requiring the Department of
1628 Legal Affairs to contract with the Division of
1629 Consumer Services for services relating to dispute
1630 settlement procedures and the New Motor Vehicle
1631 Arbitration Board; amending s. 849.0915, F.S.;
1632 renaming the Division of Consumer Services as the
1633 "Division of Consumer Protection"; providing an
1634 effective date.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment to Amendment (749088)

Delete lines 1298 - 1465
and insert:

Section 44. Section 681.109, Florida Statutes, is amended
to read:

681.109 Florida New Motor Vehicle Arbitration Board;
dispute eligibility.—

(1) If a manufacturer has a certified procedure, a consumer
claim arising during the Lemon Law rights period must be filed
with the certified procedure no later than 60 days after the
expiration of the Lemon Law rights period. If a decision is not



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rendered by the certified procedure within 40 days of filing, the consumer may apply to the department ~~division~~ to have the dispute removed to the board for arbitration.

(2) If a manufacturer has a certified procedure, a consumer claim arising during the Lemon Law rights period must be filed with the certified procedure no later than 60 days after the expiration of the Lemon Law rights period. If a consumer is not satisfied with the decision or the manufacturer's compliance therewith, the consumer may apply to the department ~~division~~ to have the dispute submitted to the board for arbitration. A manufacturer may not seek review of a decision made under its procedure.

(3) If a manufacturer does not have a ~~has no~~ certified procedure or if the ~~a~~ certified procedure does not have jurisdiction to resolve the dispute, a consumer may apply directly to the department ~~division~~ to have the dispute submitted to the board for arbitration.

(4) A consumer must request arbitration before the board with respect to a claim arising during the Lemon Law rights period no later than 60 days after the expiration of the Lemon Law rights period, or within 30 days after the final action of a certified procedure, whichever date occurs later.

(5) The department ~~division~~ shall screen all requests for arbitration before the board to determine eligibility. The consumer's request for arbitration before the board shall be made on a form prescribed by the department. The department ~~division~~ shall forward to the board all disputes that the department ~~division~~ determines are potentially entitled to relief under this chapter.



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(6) The department ~~division~~ may reject a dispute that it determines to be fraudulent or outside the scope of the board's authority. Any dispute deemed by the department ~~division~~ to be ineligible for arbitration by the board due to insufficient evidence may be reconsidered upon the submission of new information regarding the dispute. Following a second review, the department ~~division~~ may reject a dispute if the evidence is clearly insufficient to qualify for relief. If the department rejects a dispute, it must provide notice of the rejection and a brief explanation of the reason for rejection ~~Any dispute rejected by the division shall be forwarded to the department and a copy shall be sent by registered mail to the consumer and to the manufacturer, containing a brief explanation as to the reason for rejection.~~

(7) If the department ~~division~~ rejects a dispute, the consumer may file a lawsuit to enforce the remedies provided under this chapter. In any civil action arising under this chapter and relating to a matter considered by the department ~~division~~, any determination made to reject a dispute is admissible in evidence.

(8) The department ~~may~~ shall ~~have the authority to~~ adopt ~~reasonable~~ rules to administer ~~carry out the provisions of this~~ section.

Section 45. Subsections (2), (3), (4), (5), (9), (11), and (12) of section 681.1095, Florida Statutes, are amended, and subsection (17) is added to that section, to read:

681.1095 Florida New Motor Vehicle Arbitration Board;
creation and function.—

(2) The board ~~boards~~ shall hear cases in various locations



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71 throughout the state so that any consumer whose dispute is
72 approved for arbitration by the department ~~division~~ may attend
73 an arbitration hearing at a reasonably convenient location and
74 present a dispute orally. Hearings shall be conducted by panels
75 of three board members assigned by the department. A majority
76 vote of the three-member board panel shall be required to render
77 a decision. Arbitration proceedings under this section shall be
78 open to the public on reasonable and nondiscriminatory terms.

79 (3) Each region of the board shall consist of up to eight
80 members. The members of the board shall construe and apply the
81 provisions of this chapter, and rules adopted thereunder, in
82 making their decisions. An administrator and a secretary shall
83 be assigned to each region of the board by the Department of
84 Legal Affairs. At least one member of the ~~each~~ board in each
85 region must have ~~be a person with~~ expertise in motor vehicle
86 mechanics. A member may ~~must~~ not be employed by a manufacturer
87 or a franchised motor vehicle dealer or be a staff member, a
88 decisionmaker, or a consultant for a procedure. Board members
89 shall be trained in the application of this chapter and any
90 rules adopted under this chapter. Members of the board, shall be
91 ~~reimbursed for travel expenses pursuant to s. 112.061, and shall~~
92 ~~be compensated at a rate or wage prescribed by the Attorney~~
93 General and are entitled to reimbursement for per diem and
94 travel expenses pursuant to s. 112.061.

95 (4) Before filing a civil action on a matter subject to s.
96 681.104, the consumer must first submit the dispute to the
97 department ~~division~~, and to the board if such dispute is deemed
98 eligible for arbitration.

99 (5) Manufacturers shall submit to arbitration conducted by



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the board if such arbitration is requested by a consumer and the dispute is deemed eligible for arbitration by the department ~~division~~ pursuant to s. 681.109.

(9) The decision of the board shall be sent by any method providing a delivery confirmation ~~registered mail~~ to the consumer and the manufacturer, and shall contain written findings of fact and rationale for the decision. If the decision is in favor of the consumer, the manufacturer must, within 40 days after receipt of the decision, comply with the terms of the decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award. In any civil action arising under this chapter and relating to a dispute arbitrated before the board, any decision by the board is admissible in evidence.

(11) ~~All provisions in~~ This section and s. 681.109 pertaining to compulsory arbitration before the board, the dispute eligibility screening by the department ~~division~~, the proceedings and decisions of the board, and any appeals thereof, are exempt from ~~the provisions of~~ chapter 120.

(12) An appeal of a decision by the board to the circuit court by a consumer or a manufacturer shall be by trial de novo. In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon for appeal. Within 15 ~~30~~ days after ~~of~~ final disposition of the appeal, the appealing party shall furnish the department with ~~notice of such disposition and, upon request, shall furnish the department with~~ a copy of the settlement or the order or judgment of the court.



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129 (17) The department may adopt rules to administer this
130 section.

131 Section 46. Subsections (2) and (4) of section 681.1096,
132 Florida Statutes, are amended to read:

133 681.1096 RV Mediation and Arbitration Program; creation and
134 qualifications.—

135 (2) Each manufacturer of a recreational vehicle involved in
136 a dispute that is determined eligible under this chapter,
137 including chassis and component manufacturers that ~~which~~
138 separately warrant the chassis and components and that ~~which~~
139 otherwise meet the definition of manufacturer set forth in s.
140 681.102(13) ~~681.102(14)~~, shall participate in a mediation and
141 arbitration program that is deemed qualified by the department.

142 (4) The department shall monitor the program for compliance
143 with this chapter. If the program is determined not qualified or
144 if qualification is revoked, then disputes shall be subject to
145 the provisions of ss. 681.109 and 681.1095. If the program is
146 determined not qualified or if qualification is revoked as to a
147 manufacturer, all those manufacturers potentially involved in
148 the eligible consumer dispute shall be required to submit to
149 arbitration conducted by the board if such arbitration is
150 requested by a consumer and the dispute is deemed eligible for
151 arbitration by the department ~~division~~ pursuant to s. 681.109. A
152 consumer having a dispute involving one or more manufacturers
153 for which the program has been determined not qualified, or for
154 which qualification has been revoked, is not required to submit
155 the dispute to the program irrespective of whether the program
156 may be qualified as to some of the manufacturers potentially
157 involved in the dispute.



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Section 47. Subsection (2) of section 681.112, Florida Statutes, is amended to read:

681.112 Consumer remedies.—

(2) An action brought under this chapter must be commenced within 1 year after the expiration of the Lemon Law rights period, or, if a consumer resorts to an informal dispute-settlement procedure or submits a dispute to the department ~~division~~ or board, within 1 year after the final action of the procedure, department ~~division~~, or board.

Section 48. Subsection (1) of section 681.117, Florida Statutes, is amended to read:

681.117 Fee.—

(1) A \$2 fee shall be collected by a motor vehicle dealer, or by a person engaged in the business of leasing motor vehicles, from the consumer at the consummation of the sale of a motor vehicle or at the time of entry into a lease agreement for a motor vehicle. Such fees shall be remitted to the county tax collector or private tag agency acting as agent for the Department of Revenue. If the purchaser or lessee removes the motor vehicle from the state for titling and registration outside this state, the fee shall be remitted to the Department of Revenue. All fees, less the cost of administration, shall be transferred monthly to the Department of Legal Affairs for deposit into the Motor Vehicle Warranty Trust Fund. ~~The Department of Legal Affairs shall distribute monthly an amount not exceeding one-fourth of the fees received to the Division of Consumer Services of the Department of Agriculture and Consumer Services to carry out the provisions of ss. 681.108 and 681.109. The Department of Legal Affairs shall contract with the Division~~



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187 ~~of Consumer Services for payment of services performed by the~~
188 ~~division pursuant to ss. 681.108 and 681.109.~~
189

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 Commerce and Tourism Committee

BILL: SB 1916

INTRODUCER: Senator Detert

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill, filed at the request of the Department of Agriculture and Consumer Services (DACS), addresses a variety of issues. The significant changes include:

- Changing the name of the Division of Consumer Services to the Division of Consumer Protection;
- Deleting the authority for DACS to enforce the prohibition against unconscionable prices relating to the rental or sale of essential commodities during a declared state of emergency (also known as the statutory “Price Gouging” restriction); and
- Transferring DACS responsibilities for enforcement of the Motor Vehicle Warranty Enforcement Act (or “Lemon Law”) to the Attorney General.

As it relates to citizenship and residency qualifications for all licenses for security guard, private investigator, and recovery agents the bill requires:

- Applicants for an armed security guard or firearms instructor license must be a U.S. citizen or permanent legal resident alien, and provide proof that the applicant (permanent resident alien) has resided in the state of residence shown on the application for at least 90 consecutive days before the date the application is submitted; and
- Applicants for a security guard, private investigator, or recovery agent to be a U.S. citizen, permanent resident alien, or submit proof of current employment authorization issued by the United States Citizenship and Immigration Services.

The bill extends the Class “K” firearms instructor license period, from 2 to 3 years.

Consistent with other licensing and registration provisions in ch. 501, F.S., this bill removes the requirement to provide a social security number for licenses and registration through DACS, consistent with the restrictions imposed by the Federal Privacy Act. In lieu of a social security number, the bill requires commercial telephone sellers (s. 501.605, F.S.) and telemarketing salespersons (s. 501.607, F.S.), to provide “other valid form of identification.”

This bill also deletes the requirement that the seller of a business opportunity, registered under ch. 559, F.S., provide the social security numbers of the seller’s agents to DACS.

As to miscellaneous provisions relating to licenses for security guard, private investigator and recovery agents, the bill makes technical, minor and conforming changes to the current law.

This bill substantially amends the following sections of the Florida Statutes: 14.26, 20.14, 213.053, 320.275, 366.85, 493.6105, 493.6106, 493.6107, 493.6108, 493.6111, 493.6113, 493.6115, 493.6118, 493.6121, 493.6202, 493.6203, 493.6302, 493.6303, 493.6304, 493.6401, 493.6402, 493.6406, 493.404, 496.411, 496.412, 496.419, 501.015, 501.017, 501.145, 501.160, 501.605, 501.607, 539.001, 559.805, 559.904, 570.544, 681.102, 681.103, 681.108, 681.109, 681.1095, 681.1096, 681.112, 681.117, and 849.0915.

II. Present Situation:

Price Gouging Statute

Chapter 501, F.S., governs the rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices also known as price gouging. This statute requires DACS, the office of the state attorney, or the Department of Legal Affairs to enforce the provisions of this section.¹

Lemon Law Statute

Section 681.10, F.S., is the Florida “Motor Vehicle Warranty Enforcement Act.” The intent of this act is that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer within a specified period of time; however, it is not the intent of the Legislature that a consumer establish the presumption of a reasonable number of attempts as to each manufacturer that provides a warranty directly to the consumer. The act provides the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the warranty provided for in this chapter.²

Private Security, Private Investigative, and Recovery Services

The Division of Licensing of the Department of Agriculture and Consumer Services is responsible for the regulation of licensing of private security, private investigative and recovery

¹ Section 501.160(8), F.S.

² Section 681.101, F.S.

services, and firearms instructors as well as the agencies and schools who provide training for these groups.³

A **security officer** is defined as:

any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.⁴

A “**private investigator**” is defined as “any individual who, for consideration, advertises as providing or performs private investigation.”⁵ Private investigation is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefore.⁶

A “**recovery agent**” is defined as “any individual who, for consideration, advertises as providing or performs repossessions.”⁷ “Recovery agency” is defined as “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.”⁸ “Repossession” means recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, industrial equipment, and motor homes:

³ Chapter 493, F.S. Regulating private investigative, private security, and recovery industries was assigned to the Department of State in 1965. In 2002, the Division of Licensing of the Department of State was transferred to the Department of Agriculture and Consumer Services, including the Concealed Weapons Permit Program. See ss. 1, 3-10, ch. 2002-295, L.O.F.

⁴ Section 493.6101(19), F.S.

⁵ Section 493.6101(16), F.S.

⁶ Section 493.6101(17), F.S.

⁷ Section 493.6101(21), F.S.

⁸ Section 493.6101(20), F.S.

“...by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.”⁹

Certain individuals are exempt from the licensing requirements for private security and private investigative services. These include local, state, and federal law enforcement officers, licensed insurance investigators and individuals solely, exclusively, and regularly employed as unarmed investigators and security officers “in connection with the business of his or her employer, when there exists an employer-employee relationship.”¹⁰

Florida law establishes criteria for granting licenses for security, private investigative, and repossession services. Individuals seeking a license must clear a criminal background check as well as meet specific training and experience requirements, which vary by the type of license. In addition, the applicant must:

- Be at least 18 years of age;
- Be of good moral character;
- Not be adjudicated incapacitated;
- Not be a chronic and habitual user of alcoholic beverages to the extent normal facilities are impaired;
- Not have been committed for abuse of controlled substances or found guilty of a crime under ch. 893, F.S.; and
- Be a citizen or legal resident alien of the U.S or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services.¹¹

Aliens

A Permanent Resident Alien is an alien admitted to the United States as a lawful permanent resident. Permanent residents are also commonly referred to as immigrants; however, the Immigration and Nationality Act (INA) broadly defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant categories.¹² An illegal alien who entered the United States without inspection, for example, would be strictly defined as an immigrant under the INA but is not a permanent resident alien.¹³

Non-permanent resident aliens are citizens of another country who reside in the U.S. under a Conditional Resident Alien Card, Temporary Resident Card, work visa, student visa or some other permit for some specified period of time.

However, there are more than 75 classifications of nonimmigrant visas – each based on the reason for entering the United States and having different terms of admission. The U. S.

⁹ Section 493.6101(22), F.S.

¹⁰ Section 493.6102(1)-(4), F.S.

¹¹ Section 493.6106(1), F.S.

¹² INA section 101(a)(15)

¹³ See <http://www.visaportal.com/glossary/term.asp?id=45>.

Citizenship and Immigration Services data further indicates that in 2004, the United States received almost 173 million nonimmigrant visits.¹⁴

License Classifications

Chapter 493, F.S., provides for the following classification of licenses issued by the Division of Licensing of DACS:¹⁵

PRIVATE INVESTIGATION

Agency	Class "A"
Private Investigator	Class "C"
Armed Private Investigator	Class "C" & Class "G"
Branch Office	Class "AA"
Manager	Class "C" or Class "MA" or Class "M"
Intern	Class "CC"

PRIVATE SECURITY

Agency	Class "B"
Security Officer	Class "D"
Armed Security Officer	Class "D" & Class "G"
Branch Office	Class "BB"
Manager	Class "MB" or Class "M"

REPOSSESSION ACTIVITY

Agency	Class "R"
Recovery Agent	Class "E"
Branch Office	Class "RR"
Manager	Class "MR" or Class "E"
Intern	Class "EE"

COMBINED PRIVATE INVESTIGATION AND SECURITY

Agency	Class "A" & Class "B"
Branch Office	Class "AB"
Manager	Class "M"

SCHOOLS

Security Officer School or Training Facility	Class "DS"
Security Officer Instructor	Class "DI"
Recovery Agent School or Training Facility	Class "RS"
Recovery Agent Instructor	Class "RI"

FIREARMS

Instructor	Class "K"
Statewide Firearm License	Class "G"

MANAGERS

Private Investigative Agency or Branch	Class "C", "MA", or "M"
Private Security Agency or Branch	Class "MB" or "M"
Recovery Agency or Branch	Class "E" or "MR"
Armed Manager	Appropriate Manager's License and Class "G"

¹⁴ U.S. Citizenship and Immigration Services, Temporary Migration to the United States: Nonimmigrant Admissions Under U. S. Immigration Law, January 2006.

¹⁵ See. 5N-1.116(1), F.A.C.

Class G or K Licenses

In addition to the general application requirements, applicants for a Class “G” statewide firearms license or a Class “K” firearms instructor, must satisfy minimum training criteria for firearms. However, the department can waive this requirement for a Class “K” license if the applicant can show proof that he or she is an active law enforcement officer currently certified under the Criminal Justice Standards and Training Commission or has completed the training required for that certification within the last 12 months, or if the applicant submits one of the following certificates:

- The Florida Criminal Justice Standards and Training Commission Firearms Instructor’s Certificate;
- The National Rifle Association Police Firearms Instructor’s Certificate;
- The National Rifle Association Security Firearms Instructor’s Certificate; or
- A Firearms Instructor’s Certificate from a federal, state, county, or municipal police academy in this state recognized as such by the Criminal Justice Standards and Training Commission or by the Department of Education.

III. Effect of Proposed Changes:

Sections 1-5, 23, 24, and 25 change references to the Division of Consumer *Services* to the Division of Consumer *Protection* with respect to the following statutes.

- | | |
|--------------------------------|---|
| • Section 14.26 | Citizen’s Assistance Office |
| • Section 20.14 | Department of Agriculture and Consumer Services |
| • Section 213.053 | Confidentiality and information sharing |
| • Sections 320.275 | Automobile Dealers Industry Advisory Board |
| • Section 366.85 | Responsibilities of Division of Consumer Services |
| • Sections 496.404 and 496.411 | Solicitation of Funds |
| • Section 570.544 | Division of Consumer Services |
| • Section 681.117 | Motor Vehicle Sales and Warranties |
| • Section 849.0915 | Referral Selling |

Section 6 amends s. 493.6105, F.S., to change application requirements for security, private investigator, or recovery licenses, and the related businesses or schools.

The section also amends current law by deleting the requirement that an application be notarized and requires that it be verified by the applicant under oath as provided in s. 92.525, F.S.

In lieu of the applicant providing his residence addresses for the 5 years immediately preceding the submission of the application, and the list of occupations over the same period, the applicant will only be required to submit their current residence address and mailing address.

Consistent with applications for other categories of licensees, this section reduces from two to one the number of photographs applicants for private investigator, private investigator intern, recovery agent, recovery agent intern, statewide firearms license (Class “C,” “CC,” “E,” “EE,” “G”), must supply with their application.

This section expands the amount of information related to previous convictions that applicants must submit for licensure. For all licenses the statement of all criminal convictions must include all criminal convictions, findings of guilt, and pleas of guilty or nolo contendere, regardless of adjudication of guilt. An applicant for a Class “G” statewide firearms license or a Class “K” firearms instructor license who is younger than 24 years of age must also include a statement regarding any finding of having committed a delinquent act in any state, territory, or country which would be a felony if committed by an adult and which is punishable by imprisonment for a term exceeding 1 year.

The section also clarifies the need for confirmation from the Florida Criminal Justice Standards and Training Commission that the applicant possesses an active firearms instructor certification if that document has been submitted by the applicant with the application.

Section 7 amends s. 493.6106, F.S., as it relates to citizenship and residency qualifications for all licenses for security guard, private investigator, and recovery agents, to include related businesses and schools, to require all applicants be either a citizen or a permanent legal resident alien of the U.S. or have appropriate authorization issued by the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

A new provision is created to require individual licensees – not businesses or schools – to require applicants who are not U.S. citizens to provide proof of current employment authorization or proof that they are a permanent resident alien. These individual licenses include:

- Class “C” Private Investigator
- Class “CC” Private Investigator Intern
- Class “D” Security Officer
- Class “DI” Security Officer Instructor
- Class “E” Recovery Agent
- Class “EE” Recovery Agent Intern
- Class “M” Combined Private Investigator and Security Manager
- Class “MA” Private Investigative Agency or Branch
- Class “MB” Private Security Manager
- Class “MR” Manager Recovery Agency or Branch
- Class “RI” Recovery Agent Instructor

This section also requires applicants for a Class “G” statewide firearms license or a Class “K” firearms instructor license who are not a U.S. citizen to submit proof that he or she is deemed a permanent legal resident alien together with additional documentation establishing that he or she has resided in the state shown on the application for at least 90 consecutive days before the date that the application is submitted.

In addition, an applicant for an agency or school license who is not a U.S. citizen or permanent resident alien is required to submit documentation issued by the U.S. citizenship and Immigration Services stating that he or she is lawfully in the U.S. and is authorized to own and

operate the type of agency or school for which he or she is applying.

Finally, an applicant will be denied licensure for a Class “G” statewide firearms license, or Class “K” firearms instructor license, if he or she is otherwise prohibited from purchasing or possessing a firearm under federal or state law.

Section 8 amends s. 493.6107, F.S., to allow DACS to accept personal checks or funds by electronic transfer in payment of application fees when the application is approved, except for applicants for Class “G” statewide firearms license and Class “M” manager license who must pay the fee when the application is made.

Section 9 amends s. 493.6108, F.S., to make technical corrections and adds the requirement that DACS must investigate the mental history and current mental and emotional fitness of any Class “K” firearms instructor license application before it may issue a license. It also authorizes DACS to deny a Class “K” firearms instructor license to anyone who has a history of mental illness or drug or alcohol abuse.

Section 10 amends s. 493.6111(2), F.S., to extend the license period for a Class “K” firearms instructor licensee from 2 to 3 years.

Section 11 deletes the requirement that a Class “A” or Class “R” licensee submit certification of insurance with their renewal application pursuant to s. 493.6110, F.S. This is a correction to make s. 493.6113, F.S., match the requirement in s. 493.6110, F.S.

This section also provides that each Class “K” firearms instructor licensee renewing his license must provide proof that he remains certified to provide firearms instruction.

Section 12 corrects a cross-reference in s. 493.6115, F.S., necessitated by changes made in Section 6 of the bill.

Section 13 adds paragraph (u) to subsection 493.6118(1), F.S., which establishes grounds for disciplinary action for a Class “G” statewide firearms licensee or a Class “K” firearms instructor licensee who is prohibited from purchasing or possessing a firearm by state or federal law.

Section 14 deletes s. 493.6121(6), F.S., a reference to an obsolete a program operated by Florida Department of Law Enforcement for providing criminal history record information.

Section 15 amends s. 493.6202, F.S., to allow DACS to accept personal checks and electronic funds transfers for application fees at the time the application is approved except that the application for a Class “G” statewide firearms license, Class “C” Private Investigator, Class “CC” Private Investigator Intern, Class “M” manager, or Class “MA” manager license must pay the license fee at the time the application is made.

Section 16 amends s. 493.6203, F.S., to specify that experience in performing bodyguard services is not creditable toward the requirements to become a private investigator.

This section also requires that all professional training required for a Class “CC” Private

Investigator Intern license be completed before submission of an application to the department, effective January 1, 2012. In addition, it makes provisions for those applicants who apply between the effective date of this bill and of this section.

Section 17 amends s. 493.6302, F.S., to allow for payment of application fees by personal check or electronic funds transfer at the time the application is approved except that the applicant of a Class “D” Security Officer, Class “G” statewide firearms license, Class “M,” or Class “MB” Private Security Agency or Branch license must pay the license fee at the time the application is made.

Section 18 amends s. 493.6303, F.S., to require that all professional training required for a Class “D” Security Officer license be completed before submission of an application to the department, effective January 1, 2012. In addition, it makes provisions for those applicants who apply between the effective date of this bill and of this section.

Section 19 amends s. 493.6304, F.S., to delete the requirement that an application for the security officer school be notarized and instead require that it be verified by the applicant under oath as provided in s. 92.525, F.S.

Section 20 amends s. 493.6401, F.S., to replace the term “repossessor” with “recovery agent” school or training facility, consistent with other provisions in the chapter.

Section 21 amends s. 493.6402, F.S., to replace the term “license reposessor” with “license-recovery agent,” consistent with other provisions in this section. The section is also amended to allow DACS to accept personal checks and electronic funds transfers for applications when they are approved except for a Class “E” Recovery Agent, Class “EE,” or Class “MR,” license that must pay at the time application is made.

Section 22 amends s. 493.6406, F.S., to replace the term “repossessor services” with “recovery agent services,” consistent with other provisions in the chapter. This section also deletes the requirement that an application for a recovery agent be notarized and instead requires that the application be verified by the applicant under oath as provided in s. 92.525, F.S.

Section 23 – 25 (See Effect of Proposed Changes, Section 1)

Section 26 amends s. 496.419, F.S., to change the action of DACS from “canceling” to “revoking” an exemption granted under s. 496.406, F.S., for registration relating to the solicitation of funds. This change reflects the nomenclature preferred by DACS.

Section 27 amends s. 501.015, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 28 amends s. 501.017, F.S., relating to health studios, to clarify the size of the type to be used in the contract.

Section 29 amends s. 501.145, F.S., relating to the Bedding Label Act, to delete an unnecessary definition for “department,” which is not used in the act.

Section 30 amends s. 501.160, F.S., to delete authority for DACS to enforce the the prohibition against unconscionable prices relating to the rental or sale of essential commodities during a declared state of emergency (also known as the statutory “Price Gouging” restriction).

Section 31 amends s. 501.605, F.S., to delete a requirement that commercial telephone sellers provide their social security number to DACS as part of the application. This is consistent with other licensing and registration provisions in ch. 501, F.S.

Section 32 amends s. 501.607, F.S., to delete a requirement that a salesperson submit, as part of their application for a license, their social security number, and requires instead that another valid form of identification be provided. This is consistent with other licensing and registration provisions in ch. 501, F.S.

Section 33 amends s. 539.001, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 34 amends s. 559.805, F.S., to clarify provisions relating to advertisements by sellers of travel, and to delete the requirement that the social security number of the registered agents of a seller of a business opportunity be on file with DACS.

Section 35 amends s. 559.904, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 36 (See Effect of Proposed Changes, Section 1)

Sections 37-41, & 43-44 transfer DACS responsibilities for enforcement of the Motor Vehicle Warranty Enforcement Act (or Lemon Law) to the Attorney General. The following sections of the statutes are amended to effect this change: 681.102, 681.103, 681.108, 681.109, 681.1095, 681.112, and 681.117 F.S.

Section 41 amends s. 681.1095, F.S., to decrease from 30 to 15 days the opportunity to appeal a decision of the Florida New Motor Vehicle Arbitration Board. In addition, it requires that the appealing party provide a copy of the settlement or the order or judgment of the court to the department.

This section also authorizes the Department of Legal Affairs to adopt rules to administer this section.

Section 42 amends s. 681.1096, F.S., to correct a cross-reference, necessitated by changes made in Section 37 of the bill.

Section 45 (See Effect of Proposed Changes, Section 1)

Section 46 provides for an effective date of July 1, 2011.

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:**

The extension of the license period from 2 years to 3 years for a Class “K” firearms instructor license will reduce the fees generated by DACS by approximately \$5,200 in FY 11/12.¹⁶

B. Private Sector Impact:

Extends class “K” firearms instructor license period from 2 to 3 years, thereby reducing the license renewal costs to licensees.

C. Government Sector Impact:

There will be a \$386,415 reduction in costs in the form salaries, benefits and expenses to DACS based upon the responsibility for the Lemon Law going entirely to the Department of Legal Affairs. There will also be a corresponding decrease in revenues in the amount of \$248,617.¹⁷

DACS will also have less administrative costs with respect to changes made to ch. 493, F.S., in that applicants will have to complete their training before they apply for a license, thus eliminating the processing of numerous suspensions that took effect by operation of law due to licensees not meeting their training requirements, as specified under current law.

VI. Technical Deficiencies:

None.

¹⁶ DACS analysis dated March 22, 201, 1 on file with the Senate Commerce and Tourism Committee

¹⁷ Id.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 262 - 263
and insert:
through 36 of this act.

Section 3. This section and sections 4 through 36 of this

Delete lines 2207 - 2352
and insert:

Section 36. Slot machine licensees.—Notwithstanding any law to the contrary, when a resort licensee receives final authorization to conduct limited gaming activities in Miami-Dade



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or Broward Counties, a pari-mutuel facility licensed to operate slot machine gaming under s. 551.104, Florida Statutes, shall be entitled to conduct all games, including such games identified in the Resort Act as "limited games," during the same hours of operation and limits of wagering authorized for a resort licensee. Such facilities shall be subject to the same tax rate on gross receipts as the resort licensee located within Miami-Dade or Broward Counties.

Section 37. Section 849.15, Florida Statutes, is amended to read:

849.15 Manufacture, sale, possession, etc., of coin-operated devices prohibited.—

(1) It is unlawful:

(a) To manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person or under the person's management or control, any slot machine or device or any part thereof; or

(b) To make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or



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thing of value.

(2) Pursuant to section 2 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce," approved January 2, 1951, being ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. ss. 1171-1177, the State of Florida, acting by and through the duly elected and qualified members of its Legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such chapter of Congress, declare and proclaim that any county of the State of Florida within which slot machine gaming is authorized pursuant to the Destination Resort Act, sections 3 through 36 of this act, or chapter 551 is exempt from the provisions of section 2 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce," designated as 15 U.S.C. ss. 1171-1177, approved January 2, 1951. All shipments of gaming devices, including slot machines, into any county of this state within which slot machine gaming is authorized pursuant to the Destination Resort Act, sections 3 through 36 of this act, or chapter 551 and the registering, recording, and labeling of which have been duly performed by the manufacturer or distributor thereof in accordance with sections 3 and 4 of that chapter of the Congress of the United States entitled "An act to prohibit transportation of gaming devices in interstate and foreign commerce," approved January 2, 1951, being ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. ss. 1171-1177, shall be deemed legal shipments thereof into this state provided the destination of such shipments is an eligible facility as



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defined in s. 551.102, ~~or~~ the facility of a slot machine manufacturer or slot machine distributor as provided in s. 551.109(2) (a), or the facility of a resort licensee or supplier licensee under the Destination Resort Act, sections 3 through 36 of this act.

Section 38. Section 849.231, Florida Statutes, is amended to read:

849.231 Gambling devices; manufacture, sale, purchase or possession unlawful.—

(1) Except in instances when the following described implements or apparatus are being held or transported by authorized persons for the purpose of destruction, as hereinafter provided, and except in instances when the following described instruments or apparatus are being held, sold, transported, or manufactured by persons who have registered with the United States Government pursuant to the provisions of Title 15 of the United States Code, ss. 1171 et seq., as amended, so long as the described implements or apparatus are not displayed to the general public, sold for use in Florida, or held or manufactured in contravention of the requirements of 15 U.S.C. ss. 1171 et seq., it shall be unlawful for any person to manufacture, sell, transport, offer for sale, purchase, own, or have in his or her possession any roulette wheel or table, faro layout, crap table or layout, chemin de fer table or layout, chuck-a-luck wheel, bird cage such as used for gambling, bolita balls, chips with house markings, or any other device, implement, apparatus, or paraphernalia ordinarily or commonly used or designed to be used in the operation of gambling houses or establishments, excepting ordinary dice and playing cards.



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(2) In addition to any other penalties provided for the violation of this section, any occupational license held by a person found guilty of violating this section shall be suspended for a period not to exceed 5 years.

(3) This section and s. 849.05 do not apply to a vessel of foreign registry or a vessel operated under the authority of a country except the United States, while docked in this state or transiting in the territorial waters of this state.

(4) This section does not apply to limited gaming as authorized by the Destination Resort Act, sections 3 through 36 of this act.

Section 39. Section 849.25, Florida Statutes, is amended to read:

849.25 "Bookmaking" defined; penalties; exceptions.—

(1)(a) The term "bookmaking" means the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever.

(b) The following factors shall be considered in making a determination that a person has engaged in the offense of bookmaking:

1. Taking advantage of betting odds created to produce a profit for the bookmaker or charging a percentage on accepted wagers.

2. Placing all or part of accepted wagers with other bookmakers to reduce the chance of financial loss.



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129 3. Taking or receiving more than five wagers in any single
130 day.

131 4. Taking or receiving wagers totaling more than \$500 in
132 any single day, or more than \$1,500 in any single week.

133 5. Engaging in a common scheme with two or more persons to
134 take or receive wagers.

135 6. Taking or receiving wagers on both sides on a contest at
136 the identical point spread.

137 7. Any other factor relevant to establishing that the
138 operating procedures of such person are commercial in nature.

139 (c) The existence of any two factors listed in paragraph
140 (b) may constitute prima facie evidence of a commercial
141 bookmaking operation.

142 (2) Any person who engages in bookmaking commits ~~shall be~~
143 ~~guilty of~~ a felony of the third degree, punishable as provided
144 in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the
145 provisions of s. 948.01, any person convicted under the
146 provisions of this subsection shall not have adjudication of
147 guilt suspended, deferred, or withheld.

148 (3) Any person who has been convicted of bookmaking and
149 thereafter violates the provisions of this section commits ~~shall~~
150 ~~be guilty of~~ a felony of the second degree, punishable as
151 provided in s. 775.082, s. 775.083, or s. 775.084.
152 Notwithstanding the provisions of s. 948.01, any person
153 convicted under the provisions of this subsection shall not have
154 adjudication of guilt suspended, deferred, or withheld.

155 (4) Notwithstanding the provisions of s. 777.04, any person
156 who is guilty of conspiracy to commit bookmaking is ~~shall be~~
157 subject to the penalties imposed by subsections (2) and (3).



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(5) This section does ~~shall~~ not apply to pari-mutuel
wagering in Florida as authorized under chapter 550.

(6) This section does ~~shall~~ not apply to any prosecutions
filed and pending at the time of the passage hereof, but all
such cases shall be disposed of under existing laws at the time
of the institution of such prosecutions.

(7) This section does not apply to limited gaming as
authorized in the Destination Resort Act, sections 3 through 36
of this act.

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

And the title is amended as follows:

Delete line 230

and insert:

circumstances; authorizing a slot machine licensee to
conduct the same limited gaming activities as a resort
licensee under certain circumstances; subjecting a
slot machine licensee to the same tax on gross
receipts as a resort licensee in Miami-Dade or Broward
Counties; amending s. 849.15, F.S.; authorizing

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 Commerce and Tourism Committee

BILL: SB 1708

INTRODUCER: Senators Jones and Sachs

SUBJECT: Destination Resorts

DATE: March 19, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh/Oxamendi	Cooper	CM	Pre-meeting
2.			RI	
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 1740 creates the seven-member Destination Resort Commission (commission) in the Department of Revenue. The principal responsibility of the commission is to license no more than five destination resorts that would offer limited gaming. Limited gaming is defined to include baccarat, twenty-one, poker, craps, slot machines, video gaming of chance, roulette wheels, Klondike tables, punch-board, faro layout, numbers ticket, push car, jar ticket, pull tab, or their common variants, or any other game of chance or wagering device that is authorized by the commission.

The bill divides the state into five geographic districts and authorizes the commission to issue only one license for a destination resort with limited gaming per district. Each district must be represented by at least one commissioner.

Licenses would be awarded through an invitation-to-negotiate process. The commission is not required to issue invitations for all five of the locations that the commission is authorized to license. The commission may stagger its issuance of the invitations. A referendum is required for the county in which the resort would be located.

The bill establishes a \$50 million initial license fee, a \$1 million fee for a background check, and a \$5 million annual license fee. The bill provides a graduated gross receipts tax rate that would be based upon the infrastructure investment in the resort. The tax rate ranges from 10 percent for investments of \$2 billion or more, 15 percent for investments of between \$1 billion to \$2 billion, and 20 percent for investments under \$1 billion.

SB 1708 also establishes minimum requirements for the destination resorts. It requires that they contain a minimum of 500,000 square feet of meeting and convention space, and a minimum of 1,000 hotel rooms. It also limits the gaming area to no more than 10 percent of the resort.

The bill requires that the commission consider only applicants that submit a plan to train and hire Florida residents. Applicants must also use the E-verify system to verify employment eligibility, and they must offer veterans preference in employment.

Finally, SB 1708 specifies allocations of tax revenue for Visit Florida, school readiness, and transportation for the disadvantaged.

This bill substantially amends ss. 20.21, 120.80, 849.231, and 849.25, F.S.; and creates several unnumbered sections of law.

II. Present Situation:

Executive Branch Structure

Chapter 20, F.S., provides the structural components of state agencies. A “department” is the structure through which authority is exercised and to which money and positions are appropriated. Its principal subcomponent is a “division.” Units below that level may be created by departments; above that level they are created by statute.

Article IV of the Florida Constitution limits executive departments to 25 in number, excluding those authorized or created in that document. There are five constitutionally created or authorized departmental entities: State Board of Administration, Department of Veterans’ Affairs; Florida Fish & Wildlife Conservation Commission; Department of Elderly Affairs; Board of Governors; and the Parole Commission.

There are 21 departments authorized by statute: Department of State; Department of Legal Affairs; Department of Financial Services; Department of Agriculture and Consumer Services; Department of Education; Department of Business and Professional Regulation, Department of Community Affairs; Department of Children & Family Services; Florida Department of Law Enforcement; Department of Revenue; Department of Management Services; Department of Transportation; Department of Highway Safety and Motor Vehicles; Department of Environmental Protection; Department of Military Affairs; Department of Citrus; Department of Corrections; Department of Juvenile Justice; Department of the Lottery; Agency for Health Care Administration; and the Department of Health.

The Executive Office of the Governor may be considered to be functional equivalent to a department.

There appears to be 22 state entities that are subject to the constitutional limitation.

Apparently unaffected by the constitutional limitation are a number of entities with powers independent of the nominal department head. Examples of these are the Division of Emergency Management (Department of Community Affairs); the Division of Administrative Hearings (Department of Management Services), and the Financial Services Commission (Department of

Financial Services). These entities are established in an existing department, but are not subject to its control, supervision, or direction in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.

The Public Service Commission is excluded from the limitation since it is, by statute and Supreme Court decisions, a legislative branch agency.

Tourism and Convention Space

According to preliminary estimates¹ by Visit Florida, an estimated 82.6 million visitors came to Florida in 2010, an increase of 2.1 percent over 2009 figures.² For the second half of 2010, direct travel-related employment in Florida increased by 1.8 percent, with more than 15,000 additional jobs in the fourth quarter alone. Domestic visitation to Florida increased by 0.5 percent in 2010, when compared to 2009. During the same period, Canadian travel to Florida increased by 16.2 percent and the overseas market to Florida increased by 13.6-percent. Primary data collected at Florida's 14 major airports in 2010 reflects a 3.5-percent increase in total enplanements from 2009.³

Preliminary estimates of visitors to Florida for the fourth quarter of 2010 show an estimated 20.8 million people visited the Sunshine State. This reflects an increase of 5.1 percent from the same period in 2009. Visit Florida also reported that an estimated 18.0 million domestic visitors came to Florida during the fourth quarter of 2010, a 4.1 percent increase over 2009. During the same period, Canadian travel to Florida increased by 5.7 percent and the overseas market to Florida increased by 13.5 percent. Primary data collected at Florida's 14 major airports shows a 7.8 percent increase in total enplanements to Florida for the fourth quarter of 2010 over the same period in 2009.⁴

The following information regarding convention space was obtained from select areas around the state:

- In Orlando, the Gaylord Orlando Hotel has 400,000 square feet of meeting and convention space and 1,406 hotel rooms and suites;⁵ the Peabody Orlando has 300,000 square feet of meeting and convention space; the Orlando World Marriott has 450,000 square feet of meeting and convention space and 2,000 hotel rooms and suites;⁶ and the Walt Disney World Resort has more than 600,000 square feet of space.
- The Orange County Convention Center in Orlando has 2.1 million square feet of exhibit space.
- The Tampa Convention Center has 200,000 square feet of exhibit space and 42,000 square feet of meeting space.
- Jacksonville Convention Center has 78,500 square feet of exhibit space and 48,750 square feet of meeting space.

¹ Preliminary estimates are issued 45 days after the end of each calendar quarter. Final estimates are released when final data are received for all estimates in the report.

² See <http://media.visitflorida.org/news/news.php?id=169>, (last visited March 19, 2011).

³ *Id.*

⁴ *Id.*

⁵ See <http://www.gaylordhotels.com/palms-home.html?intcmp=gp-pl=topnav-ref=home>.

⁶ See <http://www.marriottworldcenter.com/>

- The Miami Convention Center has 28,000 square feet of exhibit space, an additional 34 meeting rooms, a 444-seat and a 5,000-seat auditorium, and a 117-seat lecture hall.

Economic Impact of Casino-Oriented Destination Resorts

Thirteen states now have commercial casino operations, excluding those managed by Indian Tribes or at racetracks, and Massachusetts, Texas, New York, and Rhode Island are considering legislation this year to legalize casino gambling.⁷ Data on how many casinos are stand-alone operations and how many are “destination resorts”⁸ is not readily available.

In the most recent numbers available, the American Gaming Association reported in 2008⁹ that the commercial casino industry employed more than 375,000 people earning more than \$13 billion in total wages. The report also described casinos as significant contributors to the nation’s economy, with gross gaming revenues totaling more than \$32.5 billion in 2008.

Casinos have direct economic impacts on the local and state level. For example, a 2008 economic development impact study on the Chumash Casino Resort in Santa Barbara, Calif.,¹⁰ indicated that the casino:

- Created 1,587 direct jobs and an additional 703 indirect jobs in the county;
- Generated more than \$350 million in sales in the county, and specifically that every \$10 in sales at the casino generated \$4 in additional sales in the community; and
- Tourism received a major boost when the casino opened in 2004.

The American Gaming Association maintains a database of pertinent economic data¹¹ on the 13 states that have commercial casinos and the 12 states, including Florida, with racetrack casinos (nicknamed “racinos”). The two states with commercial casinos closest to Florida – Mississippi and Louisiana – in 2009 reported significant revenues from gaming operations:

- Mississippi reported at its 30 commercial casinos:
 - Number of casino employees totaled 25,739;
 - Casino employee wages were \$855.25 million (including tips and benefits);
 - Gross casino gaming revenue was \$2.465 billion; and
 - The state’s gaming tax revenue was \$296.34 million.
- Louisiana reported at its 14 commercial casinos:
 - Number of casino employees totaled 17,610;
 - Casino employee wages were \$602.51 million;
 - Gross casino gaming revenue was \$2.456 billion; and
 - The state’s gaming tax revenue was \$598.14 million.

⁷ Interim Report 2011-133: Review of Expansion of Casino Gaming in Other States. Prepared by Senate Committee on Regulated Industries. Published in October 2010. Available at http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-133ri.pdf.

⁸ “Destination resorts” or “destination resort casinos” are generally defined as mega-centers that feature shopping, conference facilities, restaurants, and live entertainment in addition to casino gaming. Most new casinos are being built in this format.

⁹ http://www.americangaming.org/Industry/factsheets/general_info_detail.cfv?id=39.

¹⁰ Economic Impact of the Chumash Casino Resort on the County of Santa Barbara, prepared by The California Economic Forecast for the Santa Barbara County taxpayers Association. Published February 2008. Available at: http://www.sbcta.org/Final_Report_Chumash.pdf. Last visited March 19, 2011.

¹¹ The American Gaming Association has a complete list of what types of gaming operations are in each state, economic development data, and how each state uses its share of the revenues generated. The latest data is from 2009. See: <http://www.americangaming.org/Industry/state/statistics.cfm>.

The database does not calculate indirect and induced economic benefits from casino operations.

Destination resorts are also popular internationally among tourists.¹² What is purported to be the largest destination resort east of Las Vegas is under construction in the Bahamas.¹³ The new Baha Mar resort is expected to contribute an additional 10 percent growth in the Bahamian GDP by creating 12,000 jobs paying in the aggregate more than \$305 million in annual wages. According to projections, Baha Mar will help raise the average annual income for a Bahamian family from \$29,000 to \$33,500, and in its first year of operations will contribute almost \$1 billion to the local economy.

Overview of Florida Gaming Laws and Regulations

In general, gambling is illegal in Florida.¹⁴ Chapter 849, F.S., governs the conduct of gambling in Florida. Section 849.15, F.S., prohibits the manufacture, sale, lease, play, or possession of slot machines¹⁵ in Florida. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S. Florida's gambling prohibition includes prohibitions against keeping a gambling house,¹⁶ and running a lottery.¹⁷ Section 7, Art. X, of the Florida Constitution, prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.¹⁸

Gaming is permitted at licensed pari-mutuel wagering tracks and frontons,¹⁹ by the state operated lottery,²⁰ which must operate "so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens,"²¹ and by the Seminole Indian tribe.

Pari-mutuel wagering and Cardrooms

The pari-mutuel industry in Florida is made up of greyhound racing, different types of horseracing, and jai alai.²² The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (department). Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

¹² An example of websites advertising international casinos and destination resorts is <http://www.worldcasinodirectory.com>. Last visited March 19, 2011.

¹³ Information posted at <http://starglobaltribune.com/2011/destination-resorts-a-new-generation-of-tourists-destinations-opened-5954>. Last visited March 8, 2011.

¹⁴ Section 849.08, F.S.

¹⁵ Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S.

¹⁶ Section 849.01, F.S.

¹⁷ Section 849.09, F.S.

¹⁸ The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

¹⁹ See ch. 550, F.S., for the regulation of pari-mutuel activities.

²⁰ The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., provides the legislative purpose and intent in regard to the lottery.

²¹ See s. 24.104, F.S.

²² "Jai alai" or "pelota" means a ball game of Spanish origin played on a court with three walls. See s. 550.002(18), F.S.

Pari-mutuel facilities within the state are allowed to operate poker card rooms under s. 849.086, F.S. No-limit poker games are permitted.²³ The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. The games are played in a non-banking matter, i.e., the house²⁴ has no stake in the outcome of the game. Such activity is regulated by the department and must be approved by an ordinance of the county commission where the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation's monthly gross receipts.²⁵

Slot Machine Gaming

Slot machine²⁶ gaming at licensed pari-mutuels is governed by ch. 551, F.S. Pari-mutuel facilities that operate slot machine gaming or engage in other casino-style gaming are generally known as "racinos." During the 2004 General Election, the electors approved Amendment 4 to the state constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward counties upon an affirmative vote of the electors in those counties. Currently, there are five pari-mutuels in those counties conducting slot machine gaming.

Slot machine licensees are required to pay a license fee of \$2.5 million for fiscal year 2010-2011. The annual slot machine license fee is reduced in fiscal year 2011-2012 to \$2 million.²⁷ In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.²⁸

Seminole Indian Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a tribal-state compact under the Indian Gaming Regulatory Act of 1988²⁹ that authorizes the Tribe to conduct Class III gaming³⁰ at seven tribal facilities throughout the state. The compact was subsequently ratified by the Legislature.³¹

²³ Section 849.086(8)(b), F.S. Prior to the effective date of ch. 2010-29, L.O.F., the maximum bet was \$5.

²⁴ Section 849.086(2)(j), F.S., defines "house" as "the cardroom operator and all employees of the cardroom operator."

²⁵ Section 849.086(13)(a), F.S.

²⁶ Section 551.102(8), F.S., defines "slot machine" as the term is used in ch. 551, F.S., for the regulation of slot machine gaming at the qualifying Miami-Dade and Broward county pari-mutuels.

²⁷ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was \$3 million.

²⁸ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

²⁹ The Indian Gaming Regulatory Act of 1988 or "IGRA", Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 et seq.

³⁰ The Indian Gaming Regulatory Act of 1988 divides gaming into three classes:

- "Class I gaming" means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations.
- "Class II gaming" includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo. Class II gaming may also include certain non-banked card games if permitted by state law or not explicitly prohibited by the laws of the state but the card games must be played in conformity with the laws of the state. A tribe may conduct Class II gaming if:
 - the state in which the tribe is located permits such gaming for any purpose by any person, organization or entity; and
 - the governing body of the tribe adopts a gaming ordinance which is approved by the Chairman of the National Indian Gaming Commission.
- "Class III gaming" includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

³¹ Chapter 2010-29, L.O.F.

The compact has a 20-year term. It permits the Tribe to offer slot machines, raffles and drawings, and any other new game authorized for any person for any purpose, at all seven of its tribal casinos.³²

The compact permits the Tribe to conduct banked card games, including blackjack, chemin de fer, and baccarat, but the play of the banked card games is not allowed at the casinos at the Brighton or Big Cypress facilities. If these banked games are authorized for any other person for any other purpose, except if banked card games are authorized by a compact with the Miccosukee Indians, the Tribe would be authorized to offer banked cards at all seven of its facilities. The authority for banked card games terminates at the end of 5 years unless affirmatively extended by the Legislature or the Legislature authorizes any other person to offer banked card games.

In exchange for the Tribe's exclusive right to conduct slot machine gaming outside of Miami-Dade and Broward counties and the exclusive right to offer banked card games at the specified facilities (these grants of authority are known as the "exclusivity provision"), the compact provides for revenue sharing payments by the Tribe to the state as follows:

- During the initial period (first 24 months), the Tribe is required to pay \$12.5 million per month (\$150 million per year);
- After the initial period, the Tribe's guaranteed minimum revenue sharing payment is \$233 million for year 3, \$233 million for year 4, and \$234 million for year 5;
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win³³ that range from 12 percent of net win up to \$2 billion, to 25 percent of the amount of any net win greater than \$4.5 billion;
- After the first 5 years, the Tribe will continue to make payments to the state based on the percentage of net win without a guaranteed minimum payment; and
- If the Legislature does not extend the authorization for banked card games after the first 5 years, the net win calculations would exclude the net win from the Tribe's facilities in Broward County.

The compact provides for the expansion of gaming in Miami-Dade and Broward counties under the following limited circumstances:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuels located in Miami-Dade and Broward counties and if the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.

³² *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. (hereinafter *Gaming Compact*) The Tribe has three gaming facilities located in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa).

³³ The compact defines "net win" as "the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe."

- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.
- If new games are authorized to any location in Miami-Dade and Broward counties within the first 5 years of the Compact, the guaranteed minimum payment would no longer apply to the Tribe's revenue sharing payments and the \$1 billion guarantee would not be in effect. The Tribes payments would be based on the applicable percentage of net win.

Revenue sharing payments cease if:

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

III. Effect of Proposed Changes:

SB 1708 creates undesignated sections of law and amends four sections of existing law to establish the Destination Resort Act (act).

Definitions

SB 1708 provides several definitions used in the act.

The bill defines the terms “destination resort” or “resort” to mean:

“a freestanding, land-based structure in which limited gaming may be conducted. A destination resort is a mixed-use development consisting of a combination of various tourism amenities and facilities, including, but not limited to, hotels, villas, restaurants, limited gaming facilities, convention facilities, attractions, entertainment facilities, service centers, and shopping centers.”

The bill divides the state into five districts for the purpose of awarding destination resorts. It defines the following five districts as:

- District One: Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Jackson, Washington, Bay, Calhoun, Gulf, Franklin, Liberty, Gadsden, Leon, Wakulla, Jefferson, Madison, Hamilton, Taylor, Lafayette, Suwannee, Columbia, Baker, Union, Bradford, Alachua, Gilchrist, Dixie, and Levy counties.
- District Two: Nassau, Duval, Clay, Putnam, St. Johns, Flagler, Marion, Volusia, Lake, Seminole, Orange, Hernando, Polk, and Osceola counties.
- District Three: Citrus, Sumter, Pasco, Pinellas, Hillsborough, Manatee, Hardee, DeSoto, Sarasota, Charlotte, Lee, Collier, Monroe, Highlands, Okeechobee, Glades, and Hendry counties.
- District Four: Brevard, Indian River, St. Lucie, Martin, and Palm Beach counties.
- District Five: Broward and Miami-Dade counties.

The bill defines the terms “limited gaming,” “game,” or “gaming” to mean:

“the games authorized pursuant to the Resort Act in a limited gaming facility, including, but not limited to, those commonly known as baccarat, twenty-one, poker, craps, slot machines, video gaming of chance, roulette wheels, Klondike tables, punch-board, faro layout, numbers ticket, push car, jar ticket, pull tab, or their common variants, or any other game of chance or wagering device that is authorized by the commission.”

The bill defines a “qualifier.” It provides that a qualifier means:

“an affiliate, affiliated company, officer, director, or managerial employee of an applicant for a resort license, or a person who holds a direct or indirect equity interest in the applicant. The term may include an institutional investor. As used in this subsection, the terms “affiliate,” “affiliated company,” and “a person who holds a direct or indirect equity interest in the applicant” do not include a partnership, a joint venture relationship, a shareholder of a corporation, a member of a limited liability company, or a partner in a limited liability partnership that has a direct or indirect equity interest in the applicant for a resort license of 5 percent or less and is not involved in the gaming operations as defined by the rules of the commission.”

Destination Resort Commission

SB 1708 amends s. 20.21, F.S., to create the Destination Resort Commission (commission) within DOR.³⁴ The commission is created in DOR for administrative purposes only, and it is a separate budget entity not subject to control, supervision, or direction by DOR in any manner.

The commission would consist of seven members appointed by the Governor and confirmed by the Senate. The bill specifies experience requirements for the commission members, including experience in corporate finance, tourism, convention and resort management, gaming, investigation or law enforcement, business law, or related legal experience. The members would serve 4-year, staggered terms.

One member of the commission must be a Florida-licensed certified public accountant with at least 5 years of experience in general accounting. One member must have experience in the fields of investigation or law enforcement.

The bill divides the state into five destination resort districts, and requires that each district must be represented by at least one member of the commission who must reside in that district.

The bill prohibits the appointment to the commission of elected officials and persons with a direct or indirect financial interest in applicants for a resort license or resort licensees. Members may also not be related to any person within the second degree of consanguinity or affinity to any person licensed by the commission. Members also may not possess the specified criminal history, including any felony or any misdemeanor involving gambling, within the 10 years preceding their appointment.

³⁴ Section 20.21(1), F.S., provides that the agency head of the Department of Revenue is the Governor and the Cabinet.

One member of the commission shall be appointed by the Governor to serve as the chair of the commission. The chair shall be the administrative head of the commission and would be responsible for setting the agenda for commission meetings and approving all notices, vouchers, subpoenas, and reports required by the act. The bill also provides for a vice chair to be elected by the members of the commission during its first meeting.

The commission would be headquartered in Tallahassee. However, the commission is authorized to establish field offices as it deems necessary.

The initial meeting of the commission must be held by October 1, 2011. The commission must meet at least monthly.

The commission is required to appoint an executive director of the commission. The executive director must be appointed within 10 days of the commission's initial meeting. The executive director may hire assistants and other employees as necessary to conduct the business of the commission.

The bill provides for a comprehensive code of ethics which must be adopted by the commission. Generally, the code of ethics would prohibit members of the commission, the executive director, and employees of the commission from having a direct or indirect financial interest in the entities that it would regulate. It would also prohibit engaging in political activity, including using the person's official authority to influence the result of an election. Employees or agents of the commission would be prohibited from engaging in outside employment related to the activities or persons regulated by the commission.

The commissioners, the executive director, and each managerial employee must file annual financial disclosures. It also specifies the circumstances in which these persons must immediately file disclosures, including matters related to criminal arrests, negotiations for an interest in a licensee or applicant, and negotiations for employment with a licensee or applicant. These persons are also prohibited from engaging in activities that may constitute a conflict of interest.

The bill prohibits commissioners, licensees, applicants, or any affiliate or representative of an applicant or licensee from engaging directly or indirectly in an *ex parte* communication with a member of the commission concerning a pending application, license, or enforcement action or concerning a matter that likely will be pending before the commission. Any *ex parte* communication must immediately be reported in writing to the chair and placed on the record. Persons who make the *ex parte* communication must submit to the commission a written description of the communication which identifies the commissioner who received the communication. A commissioner who fails to disclose an *ex parte* communication within 10 days of the communication is subject to removal from office and a civil penalty not to exceed \$5,000. Such a violation would be investigated by the Commission on Ethics.

A violation of the act by a commissioner may result in disqualification or constitute cause for removal by the Governor. The governor may impose other disciplinary action as determined by the commissioner. Violations by employees may result in termination of employment. If the violation involves an unintentional financial interest in a licensee or applicant, the person would

not have violated the act if they divested their financial interest with 30 days after the interest was acquired.

Powers and Duties of the Commission

The principal responsibility of the commission is to exercise jurisdiction over, and to supervise, all destination resort limited gaming activity in the state. The commission may authorize five destination resorts through an invitation to negotiate process in which respondents submit accompanying applications to demonstrate their qualifications.

The commission would investigate the qualifications of the persons who respond to the invitation to negotiate and select the applicant that best serves the interest of the residents of Florida based on the:

- Potential for economic development presented by the applicant's proposed investment in infrastructure, such as hotels and other nongaming entertainment facilities; and the
- Applicant's ability to maximize revenue for the state.

The commission will have the authority to suspend or revoke the license of any person found to no longer be qualified. The commission also can deny, revoke, suspend, or place conditions on a licensee who violates any provision of the act, a rule adopted by the commission, or an order of the commission. The commission can levy fines that may not exceed \$250,000 per violation arising out of a single transaction.

In terms of enforcement authority, the commission can issue subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of records. It can apply to the courts for injunctive relief to enforce the act and any rules adopted by the commission.

The bill gives the Florida Department of Law Enforcement and local law enforcement agencies the authority to investigate criminal violations of the act and other criminal violations that occur at the resorts in conjunction with limited gaming. Section 8 of the bill authorizes the commission to employ sworn law enforcement officers.

The bill amends s. 120.80, F.S., which sets forth exceptions to the Florida Administrative Procedures Act. The bill exempts the commission from having to comply with the hearing and notice requirements in ss. 120.569 and 120.57(1)(a), F.S., the license application provisions in s. 120.60, F.S., and the waiver and variance provisions in s. 120.542, F.S.

The commission is authorized to adopt all rules necessary to implement, administer, and regulate limited gaming. The bill provides a listing of specific areas in which the commission is authorized to adopt rules, these include the types of games, the time and place for the gaming, and the structures where limited gaming is authorized. The commission also can establish procedures to scientifically test slot machines and other authorized gaming equipment. The commission can adopt any rule necessary to accomplish the purposes of the act.

The bill preempts the regulation of limited gaming activity at destination resorts to the state through the commission.

Awarding Licenses for Limited Gaming at Destination Resorts

SB 1708 authorizes limited gaming at destination resorts. A destination resort may not be awarded a resort license unless a majority of the electors in a countywide referendum have approved the conduct of limited gaming in the respective county.

Licenses would be awarded through an invitation to negotiate (invitations) process in which applicants reply on forms provided by the commission in response to the invitation to bid. The commission is not required to issue invitations for all five of the locations that the commission is authorized to permit. The commission may stagger its issuance of the invitations.

The invitation may specify the district in which the facility would be located. The commission is required, if practical, to hold a public hearing in the county or counties for which the invitation would be issued.

After reviewing the replies to the invitation, the commission may select one or more replies and commence negotiations after determining which replies are in the best interest of the state based on the selection criteria.

Criteria for the Award of a Destination Resort License

Only one destination resort license may be awarded per district. The applicant for a resort license must demonstrate the resort will:

- Increase tourism, generate jobs, provide revenue to the local economy, and provide revenue to the General Revenue Fund;
- Provide a minimum of 1,000 hotel rooms;
- Contain convention and meeting floor space of at least 500,000 square feet; and
- Limit the area where limited gaming is authorized to no more than 10 percent of the resort development's total square footage.

In addition the applicant must demonstrate:

- A history of, or a bona fide plan for, community involvement or investment in the community where the resort having a limited gaming facility will be located.
- The financial ability to purchase and maintain an adequate surety bond.
- That it has adequate capitalization to develop, construct, maintain, and operate the proposed resort and convention center in accordance with the act; and
- The ability to implement a program to train and employ residents of this state for jobs that will be available at the destination resort, including its ability to implement a program for the training of low-income persons.

The commission may assess the quality of the proposed development's aesthetic appearance in the context of its potential to provide substantial economic benefits, including the potential to provide substantial employment opportunities.

SB 1708 specifies the information that must be included in the application. The application must be sworn. The required information includes identifying information about the applicant and all qualifiers, which are defined in the bill to mean the affiliate, affiliated company, officer, director, or managerial employee of an applicant, or a person who holds a direct or indirect equity interest

in the applicant. Persons with interest of less than 5 percent do not have to be disclosed as a qualifier.

An incomplete application is grounds for denial of an application. However, if the commission determines that an application is incomplete, the applicant may request an informal conference with the executive director or his designee. The executive director may grant a 30 day extension to complete an application.

The bill provides for institutional investors of an applicant and provides that they do not have to be included in the application. Institutional investors include persons that hold less than 5 percent of the equity securities or 5 percent of the debt securities of an applicant or affiliate of the applicant, and are a publicly traded corporation. Institutional investors must also file a certified statement that they do not intend to influence or affect the affairs of the applicant or its affiliate, and that the securities of the applicant or affiliate that it holds were purchased for investment purposes only. The commission may require that an institutional investor must qualify if it finds that the investor is in a position to exercise a substantial impact upon the controlling interests of a licensee. The bill also exempts lenders and underwriters as qualifiers.

Application Fees

The application must be submitted with a nonrefundable application fee of \$1 million dollars to defray the costs of investigating and reviewing the application. The applicant must pay any investigative and review costs that exceed the \$1 million fee.

Also, the application must include a one-time licensing fee of \$50 million, which the commission must refund within 30 days of denying an application. If an applicant withdraws its application after the application deadline, the commission must refund 80 percent of the licensing fee within 30 days after the application is withdrawn.

Resort License Conditions

SB 1708 outlines the conditions for initial licensure and continuing licensure for resort licensees. The conditions require that the licensee:

- Comply with the Resort Act and rules of the commission;
- Allow the commission and the Florida Department of Law Enforcement unlimited access to and the right of inspection for the areas of the resort where limited gaming activities occur;
- Complete the resort in accordance with the timeframe and plans submitted to the commission in the proposal, unless a waiver has been granted;
- Ensure that the facilities-based computer system is operational and that all accounting functions are structured to facilitate regulatory oversight, which shall require the systems to provide for real-time information to the commission and Department of Law Enforcement;
- Ensure that each game, machine, or device is protected from tampering or manipulation;
- Submit and comply at all times with a detailed security plan;
- Keep and maintain daily records of the resort for at least 5 years; and
- Create and file with the commission a written policy for:

- Creating opportunities to purchase from vendors from this state, including minority vendors;
- Creating opportunities for employment of residents of this state, including minority residents;
- Ensuring opportunities for hiring construction services from minority contractors;
- Ensuring opportunities for employment are on an equal, nondiscriminatory basis;
- Training employees on responsible gaming and work with a compulsive or addictive gambling prevention program;
- Implementing a drug testing program;
- Using the Internet-based job-listing system of the Agency for Workforce Innovation in advertising employment opportunities; and
- Ensuring that each slot machine pays out at least 85 percent.

In addition, the bill provides that the resort licensee shall give employment preference to veterans and use the E-Verify program to verify the employment eligibility of all prospective employees.

The bill provides that the resort licensee should be renewed if the licensee demonstrates an effort to increase tourism, generate jobs, and provide revenue to the state and local economy.

Bond

Each resort licensee must, at its own cost and expense, give a bond in the penal sum³⁵ to be determined by the commission and payable to the Governor. The commission shall set the bond at the total amount of the estimated license fees and taxes estimated to become due for the resort. In lieu of a bond, a licensee may instead pay a like amount of funds to the commission.

Limited Gaming

Limited gaming may be conducted at a resort licensee, but only within the facility of the resort as approved by the commission. Limited gaming activities may not begin until the resort is completed in accordance with the plans submitted to the commission. The resort licensee may only accept wagers from persons at least 21 years of age who are present in the facility. The facility may not accept wagers using money, except for slot machine gaming. Section 24 of the bill further provides that the facility may be open 24 hours per day, 365 days per year.

License Fees

Each resort licensee is required to pay \$5 million annually to the commission as a license fee. In addition, each resort licensee is required to pay a gross receipts tax on the gross receipts for limited gaming activities at the resort. Once the resort is complete, the licensee must submit all information, as required by the commission, to determine the infrastructure investment and to set the tax rate for the resort.

If the total infrastructure investment is \$2 billion or more, the gross receipts tax rate is 10 percent. If the total infrastructure investment is at least \$1 billion but less than \$2 billion, the gross receipts tax is 15 percent. If the total infrastructure investment is less than \$1 billion, the gross receipts tax is 20 percent.

³⁵ "Penal sum" is the stated limit of the bond which, in turn, is the limit of the insurer's liability under the bond.

Uses of the Gross Receipts Tax Revenues

Pursuant to section 25 of the bill, the revenues from the gross receipts tax are deposited into the Destination Resort Trust Fund. These revenues must be used for the following purposes:

- Ninety-five percent of the money in the fund is deposited to the General Revenue Fund;
- Two and one-half percent is deposited in the Tourism Promotional Trust Fund for use by the Florida Commission on Tourism;
- One and one-fourth percent is deposited into the Employment Security Administration Trust Fund for use by the school readiness program; and
- One and one-fourth percent is deposited into the Transportation Disadvantaged Trust Fund for use by the Transportation Disadvantaged Commission, which oversees locally run programs to provide transportation services to the disabled, elderly, and underprivileged.

Fingerprint Requirements

SB 1708 provides fingerprint requirements for all applicants and licensees of the commission. The cost for fingerprinting is paid by the applicant.

Compulsive or Addictive Gambling Prevention Program

Each resort licensee is required to train employees on responsible gaming and to work with a program on responsible gambling to recognize problem gambling. The commission is required to contract for services related to the prevention of compulsive and addictive gambling. The contract for the services must require advertising of responsible gambling and the publication of a gambling telephone help line. Each resort licensee is required to fund the program with a \$250,000 annual fee.

Suppliers' and Occupational Licenses

Suppliers' licenses are required in order to furnish, on a regular or continuing basis, gaming equipment, supplies, devices, or goods or services relating to the realty, construction, or business of a resort licensee. This requirement includes, but is not limited to, manufacturers, distributors, food purveyors, construction companies, and junket enterprises. Each applicant and licensee must pay an annual license fee of \$5,000. A person is not eligible for a suppliers' license if the person has committed a felony, knowingly submitted false information to the commission, the applicant is a member of the committee, the applicant is not a natural person, or the applicant has a resort license or pari-mutuel license in either this state or any other jurisdiction.

Any person who wishes to become a gaming employee must apply to the commission for an occupational license; no person may be employed by a resort licensee until that person has an occupational license. The application fee must be set by the commission, but an employee occupational license fee may not exceed \$50. Occupational licensees must be at least 21 years old to perform gaming related functions and at least 18 to perform non-gaming related functions. A person who has committed a felony or crime involving dishonesty or moral turpitude in any jurisdiction is not eligible for an occupational license.

All applicants for suppliers' and occupational licenses must submit to background investigations and comply with the fingerprint requirements in the act. The bill authorized the commission to revoke a license for a violation of the act and commission rules. It provides the duties of each

licensee. In addition, the bill outlines when the executive director can issue a temporary suppliers' or occupational license.

Quarterly Reports

The commission is required to submit quarterly reports to the Governor, President of the Senate, and Speaker of the House of Representatives. The reports must include a statement of receipts and disbursements related to limited gaming, a summary of disciplinary actions taken by the commission, and any additional information or recommendations that the commission believes may improve the regulation of limited gaming or increase the economic benefits of limited gaming to this state.

Hearings by the Commission

The chair of the commission may assign hearings to two or more members of the commission. Only the commissioners assigned to a hearing can participate in the final decision for the commission on that matter. If only two commissioners are assigned a matter and they cannot decide, the chair may cast the deciding vote. Any party to a proceeding before the commission may request for the matter to be heard before the full commission; the full commission must convene within 15 days to hear the matter.

Resolutions of Disputes between Licensees and Patrons

If a dispute that involves alleged wins, losses, payments of cash, prizes, benefits, tickets, or other items or a dispute that involves the manner in which a game, tournament, contest, drawing, promotion, race or similar activity was conducted, cannot be resolved between the licensee and the patron, the licensee must immediately notify the commission if the dispute involves \$500 or more. If the dispute involves less than \$500, the licensee must notify the patron of the patron's right to file a complaint with the commission. The commission may investigate the matter and may require the licensee to pay restitution to the patron. Failure to notify the commission of a dispute or notifying a patron of their right to file a complaint constitutes grounds for disciplinary action against the resort licensee.

Enforcement of Credit Instruments

SB 1708 permits the use of credit instruments. Resort licensees may accept incomplete credit instruments if they are signed by the patron and the amount is completed in numbers; the resort licensee may complete the incomplete instrument. The resort licensee may accept a credit instrument payable to an affiliate of the licensee. In addition, the resort licensee may accept the credit instrument before, during, or after the patron has incurred the debt with the resort.

Voluntary Self Exclusion

SB 1708 provides that a person may request to be excluded for all limited gaming facilities by completing a self-exclusion form and submitting it to the commission. The form requires the patron to include his or her name, date of birth, and other identifying information. The form also requires the individual to indicate how long he or she wishes to be excluded from the limited gaming facilities.

Conforming Provisions

SB 1708 amends the gambling devices prohibition in s. 849.231, F.S., and the bookmaking prohibition in s. 849.25, F.S., to incorporate the limited gaming authorization provided in the bill.

Effective Date

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

A tied public records bill, SB 1712, has been filed to accompany this bill.

C. Trust Funds Restrictions:

A tied trust fund bill, SB 1710, has been filed to accompany this bill.

D. Other Constitutional Issues:

The Florida Constitution is silent on the subject of casino gaming. However, the Florida Constitution does not prohibit the Legislature from creating laws to authorize, regulate, or tax gaming in the state. With regard to gaming, the Florida Constitution only addresses the subjects of lotteries and slot machine gaming. The Florida Constitution prohibits lotteries, except pari-mutuel pools permitted by state law,³⁶ but specifically allow for state operated lotteries.³⁷

Even though the Florida Constitution does not specifically prohibit any form of gaming other than lotteries that are not state operated, the provision that expanded the pari-mutuel locations that can offer slot machine gaming is being challenged as violating s. 23, Art. X, Florida Constitution. These lawsuits challenge the Legislature's authority to authorize slot machine gaming outside the pari-mutuel facilities enumerated in s. 23, Art. X, of the Florida Constitution, which references pari-mutuel facilities that were existing and had conducted live racing or games in that county during each of the last 2 calendar years before the effective date of the amendment (2004). The trial court upheld the

³⁶ Section 7, Art. X, Florida Constitution.

³⁷ Section 15, Art. X, Florida Constitution.

constitutionality in Leon County.³⁸ That decision is on appeal to the First District Court of Appeals.³⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Applicants for a destination resort license would pay an application fee of \$1 million dollars to defray the costs of investigating and reviewing the application, plus any investigative and review costs that exceed \$1 million.

The application also must include a one-time licensing fee of \$50 million, which the commission must refund within 30 days of denying an application. If an applicant withdraws its application after the application deadline, the commission must refund 80 percent of the licensing fee within 30 days after the application is withdrawn.

Each resort licensee would be required to pay \$5 million annually to the commission as a license fee. In addition, each resort licensee would pay a gross receipts tax. The tax rate would be dependent on the licensee's investment in infrastructure. Once the resort is complete, the licensee must submit all information, as required by the commission, to determine the infrastructure investment and to set the tax rate for the resort. If the total infrastructure investment is \$2 billion or more, the gross receipts tax rate is 10 percent. If the total infrastructure investment is at least \$1 billion but less than \$2 billion, the gross receipts tax is 15 percent. If the total infrastructure investment is less than \$1 billion, the gross receipts tax is 20 percent.

Suppliers' licensees would be required to pay an annual license fee of \$5,000, while the fee for an occupational licensee may not exceed \$50.

The state's Revenue Estimating Conference has not met to estimate the revenue impact of SB 1708. However, the casino industry estimates that implementation of SB 1708 may:

- Generate total non-gaming revenue for the first year of \$85.4 million;
- Induce by the third year \$64.5 million in convention and local bed tax collections; and
- Increase collections of corporate income taxes and sales taxes by nearly \$52 million.

³⁸ See Order on Plaintiff's Motion for Summary Judgment, consolidated cases, *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, No. 2010 CA 2257 and *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, No. 2010 CA 2132 (Fla. 2d Cir. Ct. December 14, 2010).

³⁹ See *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D11-130 (Fla. 1st DCA) and *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D10-6780 (Fla. 1st DCA).

B. Private Sector Impact:

The industry estimates that the five resorts, if authorized, would create 140,000 construction jobs and would generate \$10 billion in construction costs.

The industry estimates that the five resorts, if built, would attract 5.26 million out-of-market visitors, including more than 313,000 convention visitors.

C. Government Sector Impact:

Indeterminate. However, the bill authorizes fees projected to be sufficient to pay the costs of administering the act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

State revenue-sharing with the Seminole Indian Compact relies on continued exclusivity of casino-style and Class III gaming. The authorization for full commercial casinos would constitute a casino style and Class III gaming expansion and would affect the revenue-sharing payments that the Tribe is required to make to the state under the compact. Any cessation or reduction of revenue sharing payments upon the expansion of casino gaming would depend on the location of the new casinos. It is important to stress that any cessation or reduction of revenue sharing payments would only occur when the first Class III or other casino-style game is played. The mere authorization of Class III gaming or other casino-style gaming would not affect the payments.

It is also important to note that the state's expansion of Class-III gaming or casino-style gaming would not mean that the state had violated its compact with the Tribe. The compact specifies the consequences, particularly the financial ramifications, if the state elects to expand gaming in this state, and does not expressly prohibit any such expansion.

If the Destination Resort Commission approves a destination resort with limited gaming in any location outside of Miami-Dade and Broward Counties, all of the Tribe's revenue-sharing payments would stop once the first game is played.⁴⁰ If the Destination Resort Commission approves a destination resort with limited gaming inside of Miami-Dade and Broward Counties, but the location is not at a pari-mutuel facility, the Tribe would continue to make revenue-share payments, but the Tribe would exclude the net win from their Broward facilities. According to the division, the net win from the Tribe's Broward facilities equals approximately 47 percent of the Tribe's total net win. Therefore, if casino-style gaming were expanded and limited to Miami-Dade and Broward Counties, the Tribe's payments would be reduced by approximately 47 percent.

⁴⁰ See Part XII. A., *Gaming Compact*, *supra* n. 29.

In addition, if the destination resort with limited gaming is authorized for any location in Miami-Dade or Broward counties within the first 5 years of the compact, the guaranteed minimum payment and the \$1 billion guarantee for the first 5 years of the compact would no longer apply. The Tribe's payments would be based on the applicable percentage of net win.

Once the new gaming begins at licensed destination resorts, the Tribe may continue to offer the covered games authorized in the compact plus any additional games that are authorized for the destination resorts.⁴¹ The Tribe will have to renegotiate a new Compact for Class III games when the Compact expires at the end of its 20-year term,⁴² but it is not clear what reason the Tribe would have to renegotiate the revenue-sharing terms if casino-style gaming is authorized at destination resorts in the state. However, the Tribe would have to negotiate a new compact at the end of the current compact's term before it could continue to offer the covered games.⁴³

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.

⁴¹ See the definition of covered games at Part III.F.4., *Gaming compact*, *supra* at n. 29.

⁴² See Part XVI.B., *Gaming Compact*, *supra* at n. 29.

⁴³ IGRA at 18 U.S.C. s. 2710(d)(1)(C).

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 Commerce and Tourism Committee

BILL: SB 1710

INTRODUCER: Senators Jones and Sachs

SUBJECT: Trust Funds/Destination Resort Trust Fund

DATE: March 18, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.			RI	
3.			BC	
4.				
5.				
6.				

I. Summary:

A trust fund consists of moneys received by the state, which under law or under trust agreement, are segregated for a purpose authorized by law.¹

SB 1710 creates the Destination Resort Trust Fund within the Department of Revenue (DOR) to hold the deposits of licensing fees and the proceeds of gross receipts taxes imposed on destination resorts, to be created in the linked bill, SB 1708.

The deposited funds may be expended only pursuant to legislation appropriation or an approved amendment to the Destination Resort Commission's operating budget, pursuant to ch. 216, F.S.

In accordance with the state constitution, the trust fund will be terminated on July 1, 2015, unless terminated sooner by the Legislature. The trust fund must be reviewed prior to its scheduled termination according to statutory requirements.

Passage of SB 1710 requires a three-fifths vote of each chamber, pursuant to s. 19(f)(1), Art. III of the Florida Constitution.

SB 1710 creates an unnumbered section of law in the Florida Statutes.

¹ Section 215.32(2)(b)1., F.S.

II. Present Situation:

Constitutional and statutory requirements for trust funds

A trust fund consists of moneys received by the state, which under law or under trust agreement, are segregated for a purpose authorized by law. Section 19(f), Art. III, of the Florida Constitution governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of the membership of each house of the Legislature. This provision further specifies that a trust fund must be created in a separate bill for that purpose only.

In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.²

The Chief Financial Officer is directed to invest all trust funds and all agency funds of each state agency.³ Under current law, any balance of an appropriation for any given fiscal year that is remaining after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for re-appropriation by the Legislature.⁴ Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act.⁵

State trust funds terminate no more than 4 years after the effective date of the act that created them, unless they are re-created by the Legislature with a three-fifths vote of the Senate and the House of Representatives.

2011 legislation related to destination resorts

SB 1708, the linked companion bill to SB 1710, creates five so-called “destination resorts” throughout the state and establishes a “Destination Resort Commission” to license and otherwise regulate these facilities.

A destination resort is defined in the companion bill as a multi-use, free-standing, land-based structure in which limited gaming may be conducted, and may include a combination of tourism amenities, such as hotels, restaurants, attractions, shopping centers, and convention centers. The types of gaming that may be offered at destination resorts include baccarat, roulette, poker and other card games, craps, slot machines, and video gaming.

² Section 215.3207, F.S.

³ Section 17.61, F.S.

⁴ Section 216.301(1)(b), F.S.

⁵ Section 216.301(1)(d), F.S.

The seven-member Destination Resort Commission (commission) will be housed within the state Department of Revenue for administrative purposes only, and otherwise operate as specified in law. Among its powers and duties, the commission will have the authority to accept and review applications for destination resorts; license a total of five destination resorts; inspect the resorts' premises and gaming machines; and conduct investigations and issue subpoenas, as necessary, to gather information essential to licensing and regulating the destination resorts.

The initial application fee is \$50 million, and licensed destination resorts must pay an annual \$5 million renewal fee.

Licensed destination resorts must pay the state gross receipts taxes on a tiered percentage of their gross receipts, based on their total infrastructure investment. For example, a destination resort that invests \$2 billion or more in infrastructure must pay the state a 10-percent tax on its gross receipts. For a destination resort that invested less than \$1 billion in its infrastructure, the tax rate is 20 percent of gross receipts.

III. Effect of Proposed Changes:

Section 1 creates in an undesignated section of Florida Statutes the Destination Resort Trust Fund. Deposited in the trust fund will be the license fees for the resorts and gross receipts taxes collected from the licensed resorts.

The deposited funds may be expended only pursuant to legislation appropriation or an approved amendment to the Destination Resort Commission's operating budget, pursuant to ch. 216, F.S.

In accordance with the state constitution, the trust fund will be terminated on July 1, 2015, unless terminated sooner by the Legislature. The trust fund must be reviewed prior to its scheduled termination according to statutory requirements in s. 215.3206(1) and (2), F.S.

Section 2 provides a contingent effective date of July 1, 2011, if SB ____, or similar legislation creating the Destination Resort Commission and a process for licensing, regulating, and taxing destination resorts in Florida, is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

In accordance with s. 19(f)(2), Art. III of the Florida Constitution, the Destination Resort Trust Fund shall be terminated on July 1, 2015. Before its scheduled termination, the fund shall be reviewed in accordance with s. 215.3206(1) and (2), F.S.

In addition, s. 19(f)(1), Art. III of the Florida Constitution provides that “[n]o trust fund of the State of Florida or other public body may be created or re-created by law without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.”

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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 Commerce and Tourism Committee

BILL: SB 1712

INTRODUCER: Senators Jones and Sachs

SUBJECT: Public Records/Destination Resorts

DATE: March 18, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.			RI	
3.			GO	
4.				
5.				
6.				

I. Summary:

The Florida Constitution and the Florida Statutes ensures public access to documents received and maintained by government agencies as part of their official duties. However, the Legislature may exempt agency documents from public access. An exemption must be created by a general law specifically stating the public necessity justifying the exemption. Further, an exemption must be no broader than necessary to accomplish the stated purpose of the law.

SB 1712 creates a public-records exemption for the Florida Destination Resort Commission (commission), to be created in a linked companion bill. Proprietary confidential business information and trade secrets that might be part of the applications submitted to the commission by prospective destination resorts, or other documents submitted by licensed destination resorts in the future, would be confidential and exempt per constitutional and statutory provisions.

Additionally, the investigative techniques and procedures to be used by the commission when evaluating the applications, reviewing a destination resort's regulatory compliance, or collecting data, records, and testimony for the purpose of documenting violations at a destination resort would be confidential and exempt.

The bill also specifies there is a public necessity for the exemptions in order to ensure that the best qualified applicants for a destination resort are not deterred from applying because of confidentiality concerns, and to aid the commission in conducting investigations.

SB 1712 requires a two-thirds vote of the membership of each house of the Legislature for passage. The bill creates an undesignated section of law in the Florida Statutes.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), of the State Constitution provides:

“Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.”

In addition to the Florida Constitution, the Public Records Law,¹ which predates the constitutional provisions, specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1) (a), F.S., states:

“Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.”

Unless specifically exempted, all agency² records are available for public inspection. The term “public records” is defined in s. 119.011(11), F.S., to include:

“ . . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of the official business by any agency.”

This definition of “public records” has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business

¹Chapter 119, F.S.

²The term “agency” is defined in s. 119.011(2), F.S., to mean “...any state, county district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

which are used to perpetuate, communicate, or formalize knowledge.³ Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.⁴

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁵ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁶

Only the Legislature is authorized to create exemptions to open government requirements.⁷ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁸ A bill enacting an exemption⁹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁰

Trade Secrets

At least two subsections in different chapters of the Florida Statutes define the term “trade secret.” The first definition is part of the Uniform Trade Secrets Act¹¹ and is found in s. 688.002(4), F.S. That section defines “trade secret” to mean:

“ . . . information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

The second definition for “trade secrets” is found in s. 812.081(1)(c), F.S., which is part of a chapter of law that deals with theft, robbery and related crimes. Section 812.081(1)(c), F.S., defines “trade secret” to mean:

“ . . . the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business

³ *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁴ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

⁵ Attorney General Opinion 85-62.

⁶ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁷ Article 1, s. 24(c), State Constitution.

⁸ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁰ Art. I, s. 24(c), State Constitution.

¹¹ Section 688.001, F.S.

an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. “Trade secret” includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.”

Business entities often provide agencies with information meeting the definition of “trade secrets” under one of the foregoing sections. For example, a corporation which is negotiating with an economic development agency to relocate to Florida may provide that agency with trade secret information as part of the negotiation process.¹² Another example is the receipt of trade secret information by the State Board of Administration during its consideration of an alternative investment under s. 215.44, F.S. In both of these examples, trade secret information is protected by exemptions that are either specific to the agency or to a program.

Open Government Sunset Review Act

The Open Government Sunset Review Act (act), in s. 119.15, F.S., provides a process for the review, and repeal or reenactment of, public records exemptions.¹³ Under Florida law, a new exemption or substantial amendment to an existing exemption shall be repealed on October 2nd of the 5th year after enactment, unless the Legislature acts to reenact the exemption.¹⁴ By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives, the language and statutory citation of each exemption scheduled for repeal the following year.¹⁵

Resort Destination Commission

SB 1708, the linked companion to SB 1712, creates five so-called “destination resorts” throughout the state and establishes a “Destination Resort Commission” to license and otherwise regulate those facilities.

A destination resort is defined in the companion bill as a multi-use, free-standing, land-based structure in which limited gaming may be conducted, and may include a combination of tourism amenities, such as hotels, restaurants, attractions, shopping centers, and convention centers. The

¹² Section 288.075, F.S.

¹³ This act applies to exemptions from s. 24, Art. I, of the State Constitution and s. 119.07(1), F.S., or s. 286.011, F.S.

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(5)(a), F.S.

types of gaming that may be offered at destination resorts include baccarat, roulette, poker and other card games, craps, slot machines, and video gaming.

The seven-member commission will be housed within the state Department of Revenue for administrative purposes only, and otherwise operate as specified in law. Among its powers and duties, the commission will have the authority to accept and review applications for destination resorts; license a total of five destination resorts; inspect the resorts' premises and gaming machines; and conduct investigations and issue subpoenas, as necessary, to gather information essential to licensing and regulating the destination resorts.

The initial application fee is \$50 million, and licensed destination resorts must pay an annual \$5 million renewal fee.

Licensed destination resorts must pay the state gross receipts taxes on a tiered percentage of their gross receipts, based on their total infrastructure investment. For example, a destination resort that invests \$2 billion or more in infrastructure must pay the state a 10-percent tax on its gross receipts. For a destination resort that invested less than \$1 billion in its infrastructure, the tax rate is 20 percent of gross receipts.

III. Effect of Proposed Changes:

SB 1712 creates in an unnumbered statute a public records exemption for certain information received, and investigative techniques and procedures used, by the Destination Resort Commission. The proposed statute is modeled after exemption language in s. 288.075, F.S., for economic development agencies.

Section 1 creates an undesignated section of Florida Statutes to create a public records exemption for the commission for specific categories of information, defining terms, creating penalties, and establishing its review date per statutory requirement.

Defined are the following terms:

- “Proprietary confidential business information” means:
 - Information that is owned or controlled by an applicant for a license or licensee under the Destination Resort Act who requests confidentiality under this section;
 - That is intended to be and is treated by the applicant or licensee as private in that the disclosure of the information would cause harm to the business operations of the applicant or licensee;
 - That has not been disclosed unless disclosed pursuant to a statute or rule, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and
 - That is information concerning:
 - Business plans;
 - Internal auditing controls and reports of internal auditors; or
 - Reports of external auditors for privately held companies.
- “Trade secrets” as defined in s. 688.002, F.S.; and
- “Investigation techniques and procedures” means the methods, processes, and guidelines used to evaluate regulatory compliance and to collect and analyze data, records, and

testimony for the purpose of documenting violations of the Destination Resort Act and any promulgated rules to implement it.

SB 1712 specifies that proprietary confidential business information, trade secrets, and the commission's investigative techniques and procedures, as defined in the bill, are confidential and exempt, as are information shared by other regulatory agencies, the federal employer identification number, unemployment compensation account number, or Florida sales tax registration number held by the commission in the course of receiving and reviewing applications, or conducting investigations.

Any employee of the commission who violates the public records exemptions created in the bill has committed a misdemeanor of the second degree, punishable by a maximum 60 days in jail¹⁶ and a \$500 fine.¹⁷

These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and are repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 expresses the required Statement of Public Necessity for the public records exemptions sought for the proposed Resort Destination Commission.

A number of findings are expressed in this section about the public necessity of keeping certain information, investigative techniques, and procedures confidential and exempt. Briefly, the Legislature finds that the exemptions are necessary to:

- Ensure that the best-qualified applicants are not deterred from applying for destination resort licenses by the prospect of the disclosure of proprietary confidential business information and trade secrets.
- Protect the competitive process the commission will use to select the licensees. Selection of the best-qualified applicants for licenses is critical to ensure that the state receives the most economic benefits and greatest amount of tax revenues in granting these licenses.
- Ensure the commission's ability to effectively and efficiently enforce compliance with the Destination Resort Act, which would be significantly impaired without the exemption.
- Prevent the commission's investigations from being compromised by the release of sensitive information relating to investigations from other regulators.

Section 3 provides for a contingent effective date of July 1, 2011, if SB ____, or similar legislation creating the Destination Resort Commission and a process for licensing, regulating, and taxing destination resorts in Florida, is adopted in the same legislative session or an extension thereof and becomes law.

¹⁶ Section 775.082(4)(b), F.S.

¹⁷ Section 775.083(1)(e), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Section 24(c), Art. I, of the State Constitution requires a two-thirds vote of each chamber of the Legislature for passage of a newly created or expanded public-records or public-meetings exemption. Since SB 106 creates a new public-records exemption, it will require a two-thirds vote of each chamber of the Legislature for passage.

Statement of Public Necessity

Section 24(c), Art. I, of the State Constitution requires a statement of public necessity for a newly-created or expanded public-records or public-meetings exemption. Section 3 of this bill provides a statement of public necessity for the new public record exemptions proposed therein.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial 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.
