Tab 1	**CS/SB 284** by **EP, Diaz de la Portilla**; (Similar to CS/CS/CS/1ST ENG/H 0383) Private Property Rights						
918134	D		S	RCS	AGG, Dean	Delete everything after	04/14 04:27 PM

Tab 2	**CS/SB 714** by **EP, Grimsley (CO-INTRODUCERS) Gaetz**; (Compare to CS/CS/CS/H 0653) Environmental Control						
261900	A		S	RCS	AGG, Simpson	btw L.119 - 120:	04/14 04:34 PM

Tab 3	**CS/SB 914** by **BI, Richter**; (Similar to CS/CS/CS/H 0275) Intrastate Crowdfunding						
254474	A		S	RCS	AGG, Simpson	Delete L.1301:	04/14 04:28 PM
635024	A		S	RCS	AGG, Simpson	btw L.1439 - 1440:	04/14 04:28 PM

Tab 4	**CS/SB 1302** by **EP, Evers**; (Compare to CS/CS/H 0841) Contaminated Sites

Tab 5	**CS/SB 1352** by **GO, Smith**; Deferred Compensation

Tab 6	**SB 1468** by **Richter**; (Compare to CS/CS/CS/H 1205) Regulation of Oil and Gas Resources						
819680	A		S	WD	AGG, Dean	Delete L.42 - 51:	04/14 04:32 PM
303748	A		S	WD	AGG, Braynon	btw L.193 - 194:	04/14 04:32 PM
335094	A		S	RCS	AGG, Dean	btw L.358 - 359:	04/14 04:32 PM
632374	A		S	WD	AGG, Braynon	Delete L.434 - 435:	04/14 04:32 PM
559428	A		S	L WD	AGG, Braynon	btw L.193 - 194:	04/14 04:32 PM
195516	A		S	L WD	AGG, Braynon	Delete L.434 - 435:	04/14 04:32 PM

Tab 7	**CS/SB 1538** by **CU, Simpson**; (Compare to CS/CS/CS/1ST ENG/H 1141) Natural Gas Rebate Program						
206856	A		S	RCS	AGG, Simpson	Delete L.36 - 42:	04/14 04:36 PM
635746	AA		S	RCS	AGG, Simpson	Delete L.5 - 6:	04/14 04:36 PM

Tab 8	**CS/SB 1548** by **EP, Dean**; (Compare to CS/H 7123) Vessel Safety						
964588	A		S	RCS	AGG, Dean	Delete L.60 - 80:	04/14 04:46 PM
554434	A		S	RCS	AGG, Dean	Delete L.103 - 110:	04/14 04:46 PM

Tab 9	**SB 7056** by **GO**; (Similar to 1ST ENG/H 7023) Administrative Procedures						
864482	D		S	RCS	AGG, Dean	Delete everything after	04/14 04:29 PM

Tab 10	**SB 7076** by **MS**; (Similar to CS/H 7133) Military and Veteran Support						
735994	A		S	RCS	AGG, Simpson	Delete L.28 - 71:	04/14 04:47 PM

Tab 11	**SB 7086** by **EP**; (Similar to CS/1ST ENG/H 7135) State Lands						
882000	A		S	RCS	AGG, Hays	Delete L.176 - 178:	04/14 04:48 PM
872614	A		S	L WD	AGG, Dean	btw L.509 - 510:	04/14 04:48 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT
Senator Hays, Chair
Senator Braynon, Vice Chair

MEETING DATE: Tuesday, April 14, 2015
TIME: 1:30 —3:30 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 284** Environmental Preservation and Conservation / Diaz de la Portilla (Similar CS/CS/CS/H 383)	Private Property Rights; Authorizing a governmental entity to treat a written claim as pending litigation for purposes of holding certain meetings privately; providing that any settlement agreement reached between an owner and a governmental entity applies so long as the agreement resolves all issues; authorizing a property owner to bring an action for injunctive relief or the recovery of damages caused by a prohibited exaction; specifying that an action for a prohibited exaction is not to be construed in pari materia with certain other actions, etc. EP 03/24/2015 Fav/CS AGG 04/14/2015 Fav/CS AP	Fav/CS Yeas 5 Nays 0
2	**CS/SB 714** Environmental Preservation and Conservation / Grimsley (Compare CS/CS/H 653)	Environmental Control; Revising the qualifications for membership on the Harris Chain of Lakes Restoration Council; authorizing land set-asides and land-use modifications that reduce nutrient loads into nutrient-impaired surface waters to be used under the water quality credit trading program; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund to be used for specified purposes, etc. EP 04/08/2015 Fav/CS AGG 04/14/2015 Fav/CS AP	Fav/CS Yeas 6 Nays 0
3	**CS/SB 914** Banking and Insurance / Richter (Similar CS/CS/CS/H 275)	Intrastate Crowdfunding; Defining the term "intermediary" for purposes of the Florida Securities and Investor Protection Act; exempting offers or sales of securities by certain issuers from registration requirements; exempting the intrastate offering and sale of certain securities from certain regulatory requirements; providing registration requirements for an intermediary; requiring an intermediary to comply with specified recordkeeping requirements; including an intermediary in the disciplinary provisions, etc. BI 03/31/2015 Fav/CS AGG 04/14/2015 Fav/CS AP	Fav/CS Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 1302** Environmental Preservation and Conservation / Evers (Compare CS/CS/H 841)	Contaminated Sites; Requiring the Department of Environmental Protection to include protocols for the use of long-term natural attenuation where site conditions warrant; revising how cleanup target levels are applied where surface waters are exposed to contaminated groundwater; adding further criteria to brownfield site and brownfield areas contamination cleanup criteria, etc. EP 03/31/2015 Fav/CS AGG 04/14/2015 Favorable AP	Favorable Yeas 5 Nays 0
5	**CS/SB 1352** Governmental Oversight and Accountability / Smith	Deferred Compensation; Prohibiting contracts with investment providers and recordkeepers for local deferred compensation programs from exceeding a 5-year term; requiring a public official or body to initiate a public bid for investment providers and recordkeepers for local deferred compensation programs; prohibiting specified persons from participating in the selection of an investment provider or recordkeeper under certain circumstances; requiring the administrator of a local deferred compensation program to comply with certain fiduciary standards, etc. GO 03/31/2015 Fav/CS AGG 04/14/2015 Favorable AP	Favorable Yeas 6 Nays 0
6	**SB 1468** Richter (Compare CS/CS/H 1205, CS/CS/H 1209, Link S 1582)	Regulation of Oil and Gas Resources; Revising the rulemaking authority of the Department of Environmental Protection; providing that certain information may be considered proprietary business information; requiring that a permit be obtained before the performance of any high pressure well stimulation; requiring the Division of Resource Management to give consideration to and be guided by certain additional criteria when issuing permits, etc. EP 03/31/2015 Favorable AGG 04/14/2015 Fav/CS AP	Fav/CS Yeas 6 Nays 0
7	**CS/SB 1538** Communications, Energy, and Public Utilities / Simpson (Similar CS/CS/H 1141)	Natural Gas Rebate Program; Authorizing the Department of Agriculture and Consumer Services to award additional rebates for certain applicants using unencumbered funds; creating the heavy transportation industry natural gas rebate program within the department; authorizing an appropriation, etc. CU 03/24/2015 Fav/CS AGG 04/14/2015 Fav/CS AP	Fav/CS Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 1548** Environmental Preservation and Conservation / Dean	Vessel Safety; Defining the terms “developed waterfront property” and “safe harbor”; specifying how vessels may be anchored or moored outside public mooring fields on the waters of this state; providing a noncriminal infraction; providing an exception for counties or municipalities participating in the anchoring and mooring pilot program, etc. EP 03/31/2015 Fav/CS AGG 04/14/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0
9	**SB 7056** Governmental Oversight and Accountability (Similar H 7023)	Administrative Procedures; Revising requirements for the annual review of agency rules; specifying requirements for such plans; requiring publication by specified dates of notices of rule development and of proposed rules necessary to implement new laws, etc. AGG 04/14/2015 Fav/CS AP	Fav/CS Yeas 5 Nays 0
10	**SB 7076** Military and Veterans Affairs, Space, and Domestic Security (Similar CS/H 7133, Compare S 834)	Military and Veteran Support; Removing the requirement that an applicant to the Defense Infrastructure Grant Program provide matching funds of a certain amount; requiring the Department of Business and Professional Regulation to waive initial professional licensing fees for a veteran who has received a general discharge under honorable conditions; requiring the Department of Highway Safety and Motor Vehicles and the Department of Military Affairs to create a pilot program for commercial driver license testing for qualified members of the Florida National Guard by a specified date, etc. AGG 04/14/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0
11	**SB 7086** Environmental Preservation and Conservation (Similar CS/H 7135, Compare H 1291, CS/S 584)	State Lands; Revising measurable objectives for management goals to include the preservation of low-impact agriculture; requiring updated land management plans to identify conservation lands that could support low-impact agriculture and conservation lands that are no longer needed and could be disposed of; directing the Department of Environmental Protection to include certain county, municipal, state, and federal lands in the Florida State-Owned Lands and Records Information System (SOLARIS) database and to update the database at specified intervals, etc. AGG 04/14/2015 Fav/CS AP	Fav/CS Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/CS/SB 284 (318734)
INTRODUCER:	Appropriations Subcommittee on General Government; Environmental Preservation and Conservation Committee; and Senator Diaz de la Portilla
SUBJECT:	Private Property Rights
DATE:	April 16, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 284 creates a cause of action under ch. 70, F.S., and when claims may be brought and procedures for those claims. The bill provides that a governmental agency defending the claim has the burden of proof to defend the agency exaction. It authorizes awards of attorney fees and costs under certain circumstances. The bill provides that the state, its agencies, and political subdivisions waive sovereign immunity for causes of action under s. 70.45, F.S., which is created by the bill. The bill prohibits ss. 70.001, 70.45, and 70.51, F.S., from being construed together as parts of a common subject. The bill clarifies the terms "property owner" and "real property" and provides definitions for "damages," "governmental entity," "prohibited exaction," "property owner," and "real property" under ch. 70, F.S. It provides circumstances when a governmental entity may treat a claim as pending litigation and clarifies when a settlement offer may be accepted. It provides an exception for counties under certain circumstances and that the provisions of s. 70.45, F.S., to not apply to impact fees or non-ad valorem assessments.

The bill could have a negative indeterminate fiscal impact on governmental entities due to limitations on conditions that might otherwise be imposed. Legal costs could increase but are estimated to be minimal since claims may be settled prior to a suit being brought by a private property owner.

The bill shall take effect October 1, 2015.

II. Present Situation:

The Fifth Amendment to the U.S. Constitution guarantees that citizens' private property will not be taken for public use without just compensation. The Takings Clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment to the U.S. Constitution, which provides, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law…" The government may acquire private property through the power of eminent domain, provided the property owner is compensated.[1]

Article I, section 2 of the Florida Constitution also guarantees all natural persons the right to "acquire, possess and protect property" and further provides that no person will be deprived of property without due process of law.[2] Article X, section 6 of the Florida Constitution, which provides that private property cannot be taken except for a public purpose and with full compensation paid to each owner, is complimentary to the Fifth and Fourteenth Amendments to the U. S. Constitution.

In addition to physical infringement by a governmental entity upon a property, certain regulations on property can constitute a taking. When a governmental regulation results in a permanent, physical occupation of a property or deprives an owner of "all economically productive or beneficial uses" of the property, a "per se" taking is deemed to have occurred. Such actions require full compensation for the property.[3] Additionally, when the regulation does not substantially advance a legitimate state interest, it is invalid[4] and the property owner may recover compensation for the period during which the invalid regulation deprived all use of the property.[5]

In other takings cases, courts have used a multi-factor, "ad hoc" analysis to determine whether a regulation has adversely affected the property to such an extent as to require government compensation. The factors considered by the courts include:

- The economic impact of the regulation on the property owner;
- The extent to which the regulation interferes with the property owner's investment-backed expectations;
- Whether the regulation confers a public benefit or prevents a public harm, i.e., the nature of the regulation;
- Whether the regulation is arbitrarily and capriciously applied; and
- The history of the property, history of the development, and history of the zoning and regulation.[6]

The U.S. Supreme Court, in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, rejected property owners' contentions that a three-year moratorium on

[1] Chapters 73 and 74, F.S.
[2] FLA. CONST. art. I, s. 9.
[3] *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).
[4] *See Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).
[5] *See First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987).
[6] *See Reahard v. Lee County*, 968 F.2d 1131, 1136 (11th Cir. 1992). *See also Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470 (1987); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978); *Graham v. Estuary Properties*, 399 So. 2d 1374 (Fla. 1981).

development constituted a per se taking of property requiring compensation under the Takings Clause.[7] The Court recognized that there are a wide range of moratoria that occur as a regular part of land use regulation such as "normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like."[8] The Court determined that the length of time a parcel of property was undevelopable was one of the many factors to be considered when determining whether a taking occurred.

Regulatory Takings Requiring Compensation

Nollan v. California Coastal Comm'n, 483 U.S. 825, and *Dolan v. City of Tigard*, 512 U.S. 374, established a two-prong test to determine if a landowner should receive compensation under a takings claim. In *Nollan*, the U.S. Supreme Court held that permit conditions that do not demonstrate an essential nexus between the conditions and the purpose served by those conditions constituted a regulatory taking. In *Dolan*, the Court adopted a "rough proportionality" test, requiring that a dedication of private property must also be roughly proportional in nature and extent to the impact, or social costs, of the proposed development.[9]

Lingle v. Chevron U.S.A., Inc., 544 U.S. 528, further clarified regulatory takings by limiting them to four situations:

- When there is a permanent physical invasion of property, however slight;
- When the regulation eliminates all economic value in the property;
- When the action is the imposition of a condition on the grant of a permit that does not serve a purpose related to the permitted activity or the condition was not roughly proportional to the impact of the development; and
- When the regulation involves a substantial economic impact on the owner and interferes with the owner's investment-backed expectations or imposes an undue burden on the owner.[10]

This line of jurisprudence concerns permits that have been granted. However, it does not address conditions imposed on permits that have been denied.

Unconstitutional Exactions

In *Koontz v. St. Johns River Water Management District*, 133 S.Ct 2586 (2013), the U.S. Supreme Court held that a government cannot deny a land-use permit based on the landowner's refusal to accede to the government's demands to either turn over property or pay money to the government unless there is a nexus and rough proportionality between the government's demand on the landowner and the effect of the proposed land use.[11]

The *Koontz* case arose from the denial of a permit by the St. Johns River Water Management District (district). Coy Koontz, Sr., sought to develop part of his property and applied for the necessary permit from the district, which was required due to the effect the development would have on wetlands. Mr. Koontz wanted to develop 3.7 acres of a 14.9 acre tract of land and

[7] *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002).
[8] *See id.* (quoting *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987)).
[9] *See Dolan v. City of Tigard*, 512 U.S. 374 (1994).
[10] *See Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005).
[11] *Koontz v. St. Johns River Water Management District*, 133 S.Ct. 2586 (2013).

offered to grant a conservation easement on most of the rest of the parcel. The district considered the conservation easement inadequate and, along with offering to entertain any other suggestions, gave Mr. Koontz two choices:

- He could reduce the size of the development to one acre and grant a conservation easement on the rest of the property and make other changes to his proposed development; or
- He could build on the full 3.7 acres if he deeded to the district a conservation easement on the rest of the property, and pay to enhance approximately 50 acres of district-owned wetlands, or an equivalent project proposed by Mr. Koontz.[12]

The U.S. Supreme Court heard the case in 2013 and decided later that year in favor of Mr. Koontz. The Court's decision was based on violation of the unconstitutional condition doctrine. The doctrine precludes the government from burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them. The constitutional right burdened under the doctrine is the right to compensation when private property is taken for public use.[13] As explained by the Court, "[e]xtortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation."[14]

The Court did not rule on state or federal remedies for violating the holdings of the case. "In cases where there is an excessive demand but no taking, whether money damages are available is not a question of federal constitutional law but of the cause of action – whether state or federal – on which the landowner relies."[15] The Court left unanswered the question of whether the landowner in *Koontz* could recover damages for unconstitutional conditions claims based on the Takings Clause because the landowner's claim was based on s. 373.617, F.S.[16] Because s. 373.617, F.S., allows for damages when a state agency's action is "an unreasonable exercise of the state's police power constituting a taking without just compensation," it is a question of state law as to whether that provision covers an unconstitutional conditions claim.[17]

Remedies for Unconstitutional Conditions Claims

Federal law provides a cause of action for unconstitutional conditions claims.[18] However, it is unclear what type of damages would be recoverable under federal law. Section 373.617, F.S., allows for monetary damages to be awarded to a landowner when a circuit court determines a state agency's action is "an unreasonable exercise of the State's police power constituting a taking without just compensation." However, because this provision applies to takings, it is unclear whether it provides a cause of action for monetary damages for unconstitutional conditions claims based on the Takings Clause where no taking has occurred.

[12] *Id.* at 2593.
[13] U.S. CONST. amend. V.
[14] *Supra* note 11, at 2596.
[15] *Supra* note 11, at 2597.
[16] *Supra* note 11, at 2597.
[17] *Royal World Metropolitan, Inc. v. The City of Miami Beach,* 863 So. 2d 320 (Fla. 3d DCA 2003).
[18] See *O'Hare Truck Serv., Inc. v. City of Northlake,* 518 U.S. 712 (1996).

Bert J. Harris, Jr., Private Property Rights Protection Act

Limitation of Application of the Bert J. Harris, Jr., Private Property Rights Protection Act

In 1995, the Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act (Bert Harris Act)[19] to provide a new cause of action for private property owners whose real property has been inordinately burdened by a specific action of a governmental entity that may not rise to the level of a taking under the Florida or U.S. Constitutions.[20] The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.[21]

For the purposes of the Bert Harris Act, the term "property owner" is defined as "the person who holds legal title to the real property at issue," but does not include a governmental entity. "Real property" is defined as "land and includes any appurtenances and improvements to the land, including any other relevant real property in which the property owner had a relevant interest."[22]

Safe Harbor Provisions for Settlement Agreements

The Bert Harris Act provides for a mandatory presuit procedure in which a property owner must present written notice of the claim to the governmental entity at least 150 days, or 90 days if the property in question is classified as agricultural, prior to filing a lawsuit. During that period, unless it is extended by agreement of the parties, the governmental entity must make a written settlement offer.[23]

If the parties enter into a settlement agreement that would have the effect of a modification, variance, or special exception to the application of a rule, regulation, or ordinance that would otherwise apply to the property, the agreement must protect the public interest served by the regulation at issue and be the appropriate relief necessary to prevent the regulation from inordinately burdening the property. If the settlement agreement would have the effect of contravening the application of a statute that would otherwise apply to the property, the parties must file an action in the circuit court seeking approval of the settlement agreement, "to ensure that the relief granted protects the public interest served by the statute…and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property." These safe harbor provisions allow settlement terms that provide for the property to be immune from the application of contrary statutes and local regulations.[24]

Recently, a Florida appellate court affirmed the denial of a settlement agreement between a property owner and a governmental entity on the grounds that the parties failed to enter into the settlement agreement within the period provided in the Bert Harris Act and after the property

[19] Chapter. 95-181, Laws of Fla.
[20] Section 70.001, F.S.
[21] Section 70.001(2), F.S.
[22] Section 70.001(2), F.S. As recently noted by a Florida appellate court, "[t]he expressed legislative intent, as well as numerous other sections of the Act, indicate the Harris Act only applies when rules, ordinances, or regulations are actually applied to the property in question." *City of Jacksonville v. R. Lee Smith and Christy Smith*, Fla. 1st DCA, Case No. 1D14-2192 (Feb. 26, 2015). *See also* Op. Att'y Gen. Fla. 95-78 (1995), stating that the act "does not provide recovery of damages to property that is not the subject of governmental action or regulation, but which may have incidentally suffered a diminution in value or other loss as a result of the regulation of the subject property."
[23] Section 70.001(4)(c), F.S.
[24] Section 70.001(4)(d), F.S.

owner had filed a lawsuit under the Bert Harris Act.[25] The court's ruling, in effect, limits the safe harbor provision in the Bert Harris Act to only those settlement agreements made within the time-frame specified in the Bert Harris Act.

The National Flood Insurance Program

The National Flood Insurance Program (NFIP) is a federal program created by Congress with the passage of the National Flood Insurance Act of 1968.[26] The NFIP was created to mitigate future flood losses nationwide through sound, community-enforced building and zoning ordinances and to provide access to affordable, federally-backed flood insurance protection for property owners. The NFIP is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods.[27] Community participation in the NFIP is voluntary, although some states require NFIP participation as part of their floodplain management program. Each identified flood-prone community must assess its flood hazard and determine whether flood insurance and floodplain management would benefit the community's residents and economy.[28] Participation in the NFIP is based on an agreement between local communities and the federal government, which states if a community will adopt and enforce a floodplain management ordinance to reduce future flood risks to new construction in Special Flood Hazard Areas, the federal government will make flood insurance available within the community as a financial protection against flood losses.[29] The Federal Emergency Management Agency (FEMA) identifies flood hazard areas throughout the United States and its territories. Areas of flood hazard are commonly identified on an official map of a community, referred to as a Flood Insurance Rate Map.[30]

Some Florida counties implementing updated Flood Insurance Rate Maps required by FEMA have received claims under the Bert Harris Act for the alleged impacts to property caused by the maps. For example, Lee County's 2015 State Legislative Agenda indicates the county has received 18 claims under the Bert Harris Act due to adopting Flood Insurance Rate Maps.[31]

III. Effect of Proposed Changes:

Section 1 amends s. 70.001, F.S., to clarify that the term "property owner" means the person who holds legal title to the real property that is the subject of and directly impacted by the action of a governmental entity.

The bill clarifies that the term "real property" includes only parcels that are the subject of and directly impacted by the action of a governmental entity.

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[25] *Collier County v. Hussey*, 147 So. 3d 35 (Fla. 2d DCA 2014).
[26] Federal Emergency Management Agency, *National Flood Insurance Program – Answers to Questions About the NFIP, FEMA F-084*, 1 (Mar. 2011), *available at* http://www.fema.gov/media-library-data/20130726-1438-20490-1905/f084_atq_11aug11.pdf (last visited Mar. 25, 2015).
[27] *Id.*
[28] *Id.* at 4.
[29] *Id.* at 4.
[30] *Id.* at 2.
[31] Lee County, *State Legislative Agenda*, (Dec. 16, 2014), *available at* http://www.leegov.com/gov/BoardofCountyCommissioners/Documents/2015%20State%20Agenda_7JAN2015.pdf (last visited Mar. 25, 2015).

The bill allows a governmental entity to treat a claim as pending litigation for the purposes of s. 286.011(8), F.S., which concerns discussions between a governmental entity and a private entity's attorney.

The bill allows a settlement agreement to be reached between a property owner and a governmental entity regardless of when the settlement agreement is entered into if the agreement fully resolves all claims.

The bill exempts counties from claims regarding the adoption of a Flood Insurance Rate Map issued by FEMA for the purpose of participating in the NFIP, unless the map incorrectly applies an aspect of the map to the property in such a way, but not limited to, incorrectly assessing the elevation of the property.

Section 2 creates s. 70.45, F.S. regarding governmental exactions.

The bill defines "damages" as meaning, "in addition to the right to injunctive relief, the reduction in fair market value of the real property or the amount of the fee or infrastructure cost that exceeds what would be permitted under this section".

The bill defines "prohibited exaction" as any condition imposed by a governmental entity on a property owner's proposed use of real property which lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate.

The bill defines "governmental entity," "property owner," and "real property" as having the same meaning as provided in s. 70.001(3), F.S.

The bill provides that a property owner may bring an action for injunctive relief or to recover damages caused by a prohibited exaction. Further, it provides that the action may not be brought until a prohibited exaction is actually imposed or required in written form as a final condition of approval for the requested use of real property, and that the right to bring the action may not be waived. The bill provides that the section does not apply to impact fees or non-ad valorem assessments.

The bill requires a property owner to provide written notice of proposed action to the relevant governmental entity at least 90 days before filing the action, but no later than 180 days after the imposition of the prohibited exaction. The notice must identify the exaction the property owner believes is prohibited and include a brief explanation of why the property owner believes the exaction is prohibited and include an estimate of the damages. When the governmental entity receives the notice, it may treat the claim as pending litigation for the purposes of s. 286.011(8), F.S., which allows for a governmental entity or its representative to discuss pending litigation with the affected party and its representative.

The bill provides that when a governmental entity receives the written notice, the governmental entity must review the notice and identify the basis for the exaction and explain why it maintains that the exaction is proportionate to the harm created by the proposed use of real property, or

remove all or a portion of the exaction. The governmental entity must provide this information in writing.

The bill provides that the written response may not be used against the governmental entity in subsequent litigation other than for purposes of assessing attorney fees and costs.

The bill requires the governmental entity to prove an exaction at issue has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate. It requires the property owner to prove damages resulting from a prohibited exaction.

The bill allows the court to award attorney fees and costs to the prevailing party, but requires the court to award attorney fees and costs to the property owner if it determines that the exaction lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use.

The bill waives sovereign immunity for causes of action brought under this section of the bill. It limits the waiver to claims brought under this section.

The bill provides that the section only applies to prohibited exactions imposed or required in writing on or after October 1, 2015, as a final condition of approval for the requested use of real property.

Section 3 amends s. 70.80, F.S., to clarify that s. 70.45, F.S., has a separate and distinct basis, objective, application, and process from ss. 70.001 and 70.51, F.S., and that it may not be construed in pari materia with those two sections, meaning that it may not interpreted in light of those sections though they have a common purpose.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues

The bill waives sovereign immunity protection for the state, its agencies, and political subdivisions for causes of action based on governmental exactions. The bill provides no

limitation on the liability of political entities found to be in violation of the provisions of the bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could potentially limit expenditures required of people or entities seeking a permit by preventing a governmental entity from imposing any conditions that are deemed to be prohibited exactions.

C. Government Sector Impact:

This bill could have an indeterminate negative effect due to limitations on conditions that might otherwise have been imposed by governmental entities.

The bill could have a positive impact on counties that would otherwise be subject to suits based on the effects of adopting required Flood Insurance Rate Map.

This bill could result in an increase in legal costs for governmental entities due to the potential for increased litigation under the new cause of action provided for in the bill. However, legal costs are likely to be minimal since claims may be settled prior to a suit being brought by a private property owner.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 70.001 and 70.80.

The bill creates section 70.45 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 14, 2015:

- Amends the definition of "damages";
- Provides that the cause of action provided by the bill does not apply to impact fees or non-ad valorem assessments;
- Limits the time frame for filing an action to no later than 180 days after imposition of a prohibited exaction;
- Provides actions to be taken by a governmental entity upon receipt of a notice of claim;
- Provides that a written response by the governmental entity may only be used for purposes of assessing attorney fees and costs;
- Provides guidance for awarding fees and costs; and
- Provides that the section only applies to any prohibited exaction imposed or required in writing on or after October 1, 2015.

CS by Environmental Preservation and Conservation on March 24, 2015:

- Deletes references to ss. 253.763, 373.617, and 403.90, F.S., which were amended by the original bill to provide a cause of action for exactions takings as a result of extortionate demands as conditions of permits;
- Clarifies terms for "property owner," "real property," and "governmental entity" under ch. 70, F.S.;
- Defines "damages" and "prohibited exaction";
- Clarifies that upon receipt of a written claim, a governmental entity may treat the claim as pending litigation for the purposes of s. 286.011(8), F.S.;
- Clarifies that a settlement offer may be accepted either before or after filing an action so long as it fully resolves all claims;
- Exempts claims under the Bert Harris Act against a county for adopting a Flood Insurance Rate Map issued by FEMA for the purpose of participating in the NFIP, unless the adoption incorrectly applies an aspect of the Flood Insurance Rate Map;
- Provides a cause of action under ch. 70, F.S., for a property owner for injunctive relief or to recover damages caused by a prohibited exaction;
- Provides the cause of action may not be brought until a prohibited exaction is actually imposed or required in written form as a final condition of approval for the requested use of real property, and that the right to bring such an action may not be waived;
- Provides that a property owner must provide a written notice of the action 90 days before filing the action;
- Provides that the notice must identify the exaction the property owner believes is prohibited and include a brief explanation of why the owner believes the exaction is prohibited and an estimate of the damages;
- Provides that upon receipt of the property owner's notice, the governmental entity may treat the claim as pending litigation;

- Assigns the burden of proof to the governmental entity that the exaction has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate;
- Assigns the burden of proving damages resulting from a prohibited exaction on the property owner;
- Requires the court to award prejudgment interest and reasonable attorney fees and costs to a prevailing property owner;
- Provides the court with the option of awarding reasonable attorney fees and costs to the governmental entity if the court finds that the property owner filed the action in bad faith and absent a colorable basis for relief;
- Waives sovereign immunity for the state and its agencies or political subdivisions for causes of action brought under s. 70.45, F.S., created by the bill; and
- Provides that s. 70.45, F.S., has separate and distinct bases, objectives, applications, and processes from ss. 70.001 and 70.51, F.S.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (b), (c), and (d) of subsection (4) of section 70.001, Florida Statutes, are redesignated as paragraphs (c), (d), and (e), respectively, and amended, paragraphs (f) and (g) of subsection (3) and subsection (10) are amended, and a new paragraph (b) is added to subsection (4) of

that section, to read:

70.001 Private property rights protection.—

(3) For purposes of this section:

(f) The term "property owner" means the person who holds legal title to the real property that is the subject of and directly impacted by the action of a governmental entity ~~at issue~~. The term does not include a governmental entity.

(g) The term "real property" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the property owner has ~~had~~ a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.

(4)

(b) Upon receipt of a written claim, a governmental entity may treat the claim as pending litigation for purposes of s. 286.011(8).

(c) ~~(b)~~ The governmental entity shall provide written notice of the claim to all parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property at the addresses listed on the most recent county tax rolls. Within 15 days after the claim is ~~being~~ presented, the governmental entity shall report the claim in writing to the Department of Legal Affairs, and shall provide the department with the name, address, and telephone number of the employee of the governmental entity from whom additional information may be obtained about the claim during the pendency of the claim and any subsequent judicial action.

(d) ~~(c)~~ During the 90-day-notice period or the 150-day-

notice period, unless extended by agreement of the parties, the governmental entity shall make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.

2. Increases or modifications in the density, intensity, or use of areas of development.

3. The transfer of developmental rights.

4. Land swaps or exchanges.

5. Mitigation, including payments in lieu of onsite mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, special exception, or other extraordinary relief.

10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.

11. No changes to the action of the governmental entity.

If the property owner accepts a ~~the~~ settlement offer, either before or after filing an action, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method, subject to paragraph (e) ~~(d)~~.

(e)~~(d)~~1. When ~~Whenever~~ a governmental entity enters into a

settlement agreement under this section which would have the effect of a modification, variance, or a special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the subject real property, the relief granted shall protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

2. When ~~Whenever~~ a governmental entity enters into a settlement agreement under this section which would have the effect of contravening the application of a statute as it would otherwise apply to the subject real property, the governmental entity and the property owner shall jointly file an action in the circuit court where the real property is located for approval of the settlement agreement by the court to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

This paragraph applies to any settlement reached between a property owner and a governmental entity regardless of when the settlement agreement was entered so long as the agreement fully resolves all claims asserted under this section.

(10)(a) This section does not apply to any actions taken by a governmental entity which relate to the operation, maintenance, or expansion of transportation facilities, and this section does not affect existing law regarding eminent domain relating to transportation.

(b) This section does not apply to any actions taken by a county with respect to the adoption of a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program, unless such adoption incorrectly applies an aspect of the Flood Insurance Rate Map to the property, in such a way as to, but not limited to, incorrectly assess the elevation of the property.

Section 2. Section 70.45, Florida Statutes, is created to read:

70.45 Governmental exactions.—

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

(a) "Damages" means, in addition to the right to injunctive relief, the reduction in fair market value of the real property or the amount of the fee or infrastructure cost that exceeds what would be permitted under this section.

(b) "Governmental entity" has the same meaning as provided in s. 70.001(3)(c).

(c) "Prohibited exaction" means any condition imposed by a governmental entity on a property owner's proposed use of real property that lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.

(d) "Property owner" has the same meaning as provided in s. 70.001(3)(f).

(e) "Real property" has the same meaning as provided in s. 70.001(3)(g).

(2) In addition to other remedies available in law or

equity, a property owner may bring an action in a court of competent jurisdiction under this section to recover damages caused by a prohibited exaction. Such action may not be brought until a prohibited exaction is actually imposed or required in writing as a final condition of approval for the requested use of real property. The right to bring an action under this section may not be waived. This section does not apply to impact fees adopted under s. 163.31801 or non-ad valorem assessments as defined in s. 197.3632.

(3) At least 90 days before filing an action under this section, but no later than 180 days after imposition of the prohibited exaction, the property owner shall provide to the relevant governmental entity written notice of the proposed action. This written notice shall identify the exaction that the property owner believes is prohibited, briefly explain why the property owner believes the exaction is prohibited, and provide an estimate of the damages. Upon receipt of the property owner's written notice, the governmental entity may treat the claim as pending litigation for purposes of s. 286.011(8). Upon receipt of the written notice:

(a) The governmental entity shall review the notice of claim and respond in writing to the property owner by identifying the basis for the exaction and explaining why the governmental entity maintains that the exaction is proportionate to the harm created by the proposed use of real property, or by proposing to remove all or a portion of the exaction.

(b) The written response may not be used against the governmental entity in subsequent litigation other than for purposes of assessing attorney fees and costs under subsection

(5).

(4) For each claim filed under this section, the governmental entity has the burden of proving that the exaction has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate. The property owner has the burden of proving damages that result from a prohibited exaction.

(5) The court may award attorney fees and costs to the prevailing party; however, if the court determines that the exaction which is the subject of the claim lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use, the court shall award attorney fees and costs to the property owner.

(6) To ensure that courts may assess damages for claims filed under this section in accordance with s. 13, Art. X of the State Constitution, the state, for itself and its agencies or political subdivisions, waives sovereign immunity for causes of action based upon the application of this section. Such waiver is limited only to actions brought under this section.

(7) This section applies to any prohibited exaction imposed or required in writing on or after October 1, 2015, as a final condition of approval for the requested use of real property.

Section 3. Section 70.80, Florida Statutes, is amended to read:

70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is the express declaration of the Legislature that ss. 70.001, 70.45, and 70.51 have separate and distinct bases, objectives, applications, and processes. It is therefore the intent of the

Legislature that ss. 70.001, 70.45, and 70.51 are not to be construed in pari materia.

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

================ 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 private property rights; amending s. 70.001, F.S.; revising the terms "property owner" and "real property"; authorizing a governmental entity to treat a written claim as pending litigation for purposes of holding certain meetings privately; providing that any settlement agreement reached between an owner and a governmental entity applies so long as the agreement resolves all issues; providing exceptions to the applicability of the Bert J. Harris, Jr., Private Property Rights Protection Act; creating s. 70.45, F.S.; defining terms; authorizing a property owner to bring an action to recover damages caused by a prohibited exaction; requiring a property owner to provide written notice of such action to the relevant governmental entity; authorizing the governmental entity to treat such a claim as pending litigation for purposes of holding certain meetings privately; specifying the burden of proof imposed on the governmental entity and the property owner, respectively, in such an action; authorizing the award

of reasonable attorney fees and costs under specified circumstances; waiving the state's sovereign immunity for certain causes of action; providing applicability; amending s. 70.80, F.S.; specifying that an action for a prohibited exaction is not to be construed in pari materia with certain other actions; providing an effective date.

By the Committee on Environmental Preservation and Conservation; and Senator Diaz de la Portilla

592-02826-15 2015284c1

A bill to be entitled

An act relating to private property rights; amending s. 70.001, F.S.; revising the terms "property owner" and "real property"; authorizing a governmental entity to treat a written claim as pending litigation for purposes of holding certain meetings privately; providing that any settlement agreement reached between an owner and a governmental entity applies so long as the agreement resolves all issues; providing exceptions to the applicability of the Bert J. Harris, Jr., Private Property Rights Protection Act; creating s. 70.45, F.S.; defining terms; authorizing a property owner to bring an action for injunctive relief or the recovery of damages caused by a prohibited exaction; requiring a property owner to provide written notice of such action to the relevant governmental entity; authorizing the governmental entity to treat such claim as pending litigation for purposes of holding certain meetings privately; specifying the burdens of proof imposed on the governmental entity and the property owner in such action; authorizing the award of prejudgment interest and reasonable attorney fees and costs under specified circumstances; waiving the state's sovereign immunity for certain causes of action; amending s. 70.80, F.S.; specifying that an action for a prohibited exaction is not to be construed in pari materia with certain other actions; providing an effective date.

592-02826-15 2015284c1

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

Section 1. Paragraphs (f) and (g) of subsection (3), paragraphs (b), (c), and (d) of subsection (4), and subsection (10) of section 70.001, Florida Statutes, are amended, and a new paragraph (b) is added to subsection (4) of that section, to read:

70.001 Private property rights protection.—

(3) For purposes of this section:

(f) The term "property owner" means the person who holds legal title to the real property that is the subject of and directly impacted by the action of a governmental entity ~~at issue~~. The term does not include a governmental entity.

(g) The term "real property" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the property owner has ~~had~~ a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.

(4)

(b) Upon receipt of a written claim, a governmental entity may treat the claim as pending litigation for purposes of s. 286.011(8).

(c) ~~(b)~~ The governmental entity shall provide written notice of the claim to all parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property at the addresses listed on the most recent county tax rolls. Within 15 days after the claim is ~~being~~ presented, the governmental entity shall report the

claim in writing to the Department of Legal Affairs, and shall provide the department with the name, address, and telephone number of the employee of the governmental entity from whom additional information may be obtained about the claim during the pendency of the claim and any subsequent judicial action.

(d) ~~(c)~~ During the 90-day-notice period or the 150-day-notice period, unless extended by agreement of the parties, the governmental entity shall make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.

2. Increases or modifications in the density, intensity, or use of areas of development.

3. The transfer of developmental rights.

4. Land swaps or exchanges.

5. Mitigation, including payments in lieu of onsite mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, special exception, or other extraordinary relief.

10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.

11. No changes to the action of the governmental entity.

If the property owner accepts a ~~the~~ settlement offer either

before or after filing an action, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method, subject to paragraph (e) ~~(d)~~.

(e) ~~(d)~~ 1. When ~~Whenever~~ a governmental entity enters into a settlement agreement under this section which would have the effect of a modification, variance, or a special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the subject real property, the relief granted shall protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

2. When ~~Whenever~~ a governmental entity enters into a settlement agreement under this section which would have the effect of contravening the application of a statute as it would otherwise apply to the subject real property, the governmental entity and the property owner shall jointly file an action in the circuit court where the real property is located for approval of the settlement agreement by the court to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

This paragraph applies to any settlement agreement reached between a property owner and a governmental entity regardless of when the settlement agreement was entered into so long as the

agreement fully resolves all claims asserted under this section.

(10)(a) This section does not apply to any actions taken by a governmental entity which relate to the operation, maintenance, or expansion of transportation facilities, and this section does not affect existing law regarding eminent domain relating to transportation.

(b) This section does not apply to any actions taken by a county with respect to the adoption of a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program, unless such adoption incorrectly applies an aspect of the Flood Insurance Rate Map to the property in such a way as to, but not limited to, incorrectly assess the elevation of the property.

Section 2. Section 70.45, Florida Statutes, is created to read:

70.45 Governmental exactions.—

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

(a) "Damages" means the monetary amount necessary to fully and fairly compensate the property owner for harm caused by an exaction prohibited by this section. The term includes a reduction in the fair market value of the real property, a refund of excessive fees charged or infrastructure costs incurred, or such other actual damages as may be proven at trial.

(b) "Governmental entity" has the same meaning as in s. 70.001(3)(c).

(c) "Prohibited exaction" means any condition imposed by a governmental entity on a property owner's proposed use of real

property which lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate.

(d) "Property owner" has the same meaning as in s. 70.001(3)(f).

(e) "Real property" has the same meaning as in s. 70.001(3)(g).

(2) In addition to other remedies available in law or equity, a property owner may bring an action in a court of competent jurisdiction under this section for injunctive relief or to recover damages caused by a prohibited exaction. Such action may not be brought until a prohibited exaction is actually imposed or required in written form as a final condition of approval for the requested use of real property. The right to bring an action under this section may not be waived.

(3) At least 90 days before filing an action under this section, a property owner shall provide to the relevant governmental entity written notice of the action. This written notice must identify the exaction that the property owner believes is prohibited and include a brief explanation of why the property owner believes the exaction is prohibited and an estimate of the damages. Upon receipt of the property owner's written notice, the governmental entity may treat the claim as pending litigation for purposes of s. 286.011(8).

(4) For each claim filed under this section, the governmental entity has the burden of proving that the exaction at issue has an essential nexus to a legitimate public purpose

and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize or mitigate. The property owner has the burden of proving damages that result from a prohibited exaction.

(5) In addition to the damages provided for in this section, the court shall award prejudgment interest and reasonable attorney fees and costs to a property owner who prevails in an action under this section. The court may award reasonable attorney fees and costs to the governmental entity if the court finds that the property owner filed the action in bad faith and absent a colorable basis for relief.

(6) To ensure that courts may assess damages for claims filed under this section, in accordance with s. 13, Art. X of the State Constitution, the state for itself and for its agencies or political subdivisions waives sovereign immunity for causes of action based upon the application of this section. The waiver is limited only to claims brought under this section.

Section 3. Section 70.80, Florida Statutes, is amended to read:

70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is the express declaration of the Legislature that ss. 70.001, 70.45, and 70.51 have separate and distinct bases, objectives, applications, and processes. It is therefore the intent of the Legislature that ss. 70.001, 70.45, and 70.51 are not to be construed in pari materia.

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/14/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

284
Bill Number (if applicable)

Topic Property Rights

Amendment Barcode (if applicable)

Name DAN PETERSON

Job Title Director - Center for Property Rights

Address 2878 S. Osceola Ave
Street

Phone 407 758 2491

Orlando FL 32806
City *State* *Zip*

Email dpeterson@jamesmadison.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing JAMES Madison Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4.14.15
Meeting Date

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

284
Bill Number (if applicable)

Topic Private Property Rights

Amendment Barcode (if applicable)

Name Sarah Busk

Job Title

Address 215 S. Monroe #602
Street

TLH FL 32301
City *State* *Zip*

Phone 222.8900

Email sjb@cardenaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

284
Bill Number (if applicable)

Topic Private property Rights

Amendment Barcode (if applicable)

Name Katie Kelly

Job Title

Address
Street

Phone

City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Fla Chamber

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

284
Bill Number (if applicable)

Topic PRIVATE PROPERTY RIGHTS

Amendment Barcode (if applicable)

Name LANCE PIERCE

Job Title ASST. DIRECTOR OF STATE LEGISLATIVE AFFAIRS

Address 315 S. CALHOUN ST
Street

Phone 222-2587

TALLAHASSEE FL 32301
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA FARM BUREAU

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

284
Bill Number (if applicable)

Topic Private Property

Amendment Barcode (if applicable)

Name David Cruz

Job Title Assistant General Counsel

Address P.O. Box 1757
Street

Phone 701-3676

Tallahassee FL 32302
City *State* *Zip*

Email DCRUZ@flcities.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

284
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St.
Street

Phone 222-7500

Tallahassee FL 32301
City *State* *Zip*

Email gary h@hgslaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Property Rights Coalition

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/CS/SB 714 (183530)
INTRODUCER:	Appropriations Subcommittee on General Government; Environmental Preservation and Conservation Committee; and Senator Grimsley
SUBJECT:	Environmental Control
DATE:	April 16, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 714 related to environmental control provides the following:

- Revises requirements and necessary qualifications for membership on the Harris Chain of Lakes Restoration Council (council);
- Allows the Department of Environmental Protection (DEP) to authorize water quality credit trading for land set-asides and land-use modifications that reduce nutrient loads into nutrient impaired surface waters when they are not already required by state law or a permit;
- Provides that the provisions of s. 403.201, F.S., do not prohibit the issuance of moderating provisions or requirements under state law but are subject to approval by the U.S. Environmental Protection Agency, if necessary;
- Creates a solid waste landfill closure account and authorizes the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facilities under certain conditions;
- Incentivizes water conservation by prohibiting permitting agencies from modifying permitted water allocations during the term of the permit under certain conditions;
- Directs Water Management Districts (WMDs) to adopt rules providing water conservation incentives, including permit extensions;
- Prohibits WMDs from reducing consumptive use permitted allocation amounts during the term of the permit under certain conditions;

- Changes the requirement that water well contractor license applicants provide a letter from both a water well contractor and a water well inspector to just requiring a letter from either one;
- Requires WMDs to promote expanded cost share criteria for additional conservation practices;
- Revises a bonding requirement for clay settling areas so they can be consolidated and reduce construction impacts; and
- Clarifies a definition of resource recovery facilities to not include a landfill gas-to-energy system or facility for the purposes of exercising flow control authority.

The bill provides an appropriation of $2,339,764 from the Solid Waste Management Trust Fund within the DEP for the closing and long-term care of solid waste management facilities (see Section V, Fiscal Impact Statement).

The bill is effective July 1, 2015.

II. Present Situation:

The Harris Chain of Lakes Restoration Council

The Harris Chain of Lakes is located north and west of the Orlando metropolitan area and is in Lake and Orange counties.[1] It contains tens of thousands of acres of lakes and wetlands and is at the headwaters of the Ocklawaha River.[2]

The council was created by the Legislature in 2001 and consists of nine voting members. The members are:

- A representative of waterfront property owners;
- A representative of the sport fishing industry;
- An environmental engineer;
- A person with training in biology or another scientific discipline;
- A person with training as an attorney;
- A physician;
- A person with training as an engineer; and
- Two residents of Lake County appointed by the Lake County legislative delegation who do not meet any of the other qualifications for membership on the council.[3]

The council's duties are to:

- Review audits and all data related to lake restoration techniques and sport fish population recovery strategies;
- Evaluate whether additional studies are needed;
- Explore all possible sources of funding to conduct the restoration activities; and

[1] Harris Chain of Lakes Restoration Council, *Where is the Harris Chain of Lakes and What Does the Restoration Council Do?*, http://harrischainoflakescouncil.com/ (last visited Apr. 8, 2015).
[2] *Id*.
[3] Section 373.467, F.S.

- Report to the President of the Senate and the Speaker of the House of Representatives yearly before November 25 on the progress of the Harris Chain of Lakes restoration program and provide any recommendations for the next fiscal year.[4]

The council works with an advisory group composed of one representative from:
- The St. Johns River Water Management District, which also provides staff for the council;
- The DEP;
- The Department of Transportation;
- The Fish and Wildlife Conservation Commission;
- The Lake County Water Authority;
- The U.S. Army Corps of Engineers; and
- The University of Florida.[5]

Water Quality Credit Trading

Water quality credit trading provides a potentially less costly option for meeting the pollution limits for an impaired waterbody. It is a voluntary, market-based approach for reducing pollution to Florida's impaired rivers, lakes, streams, and estuaries.[6]

The underlying theory is that achieving pollution abatement at the lowest incremental cost at each additional increment reduced is the most cost effective means to achieve pollution abatement. Trading is based on the premise that different dischargers of a pollutant in a watershed can face substantially different costs to control that pollutant. Trading allows pollutant reduction activities to be environmentally valued in the form of credits that can then be traded on a local market to promote cost-effective water quality improvements.[7] Water quality credits are generated when a discharger reduces its loading of a given pollutant below the load allowable for the discharger.[8] Financial savings accrue to parties that buy credits (pollutant reductions) from others for less than the cost of implementing the reductions themselves. Those that sell credits will do so only if the value of the trade is equal to or higher than their investment in the facilities or activities necessary to achieve the pollutant reductions.[9]

Water quality credit trading can accelerate cleanup because potentially unaffordable costs for individual dischargers can be reduced and cooperative relationships built through trading agreements that foster shared responsibility and commitment. Trading can also accommodate new growth, including new pollutant loadings from urban stormwater, and domestic and industrial wastewater discharges. It offers the possibility for the owners of potential new or

[4] *Id.*
[5] *Id.*
[6] DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 1 (Oct. 2010), *available at* http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf (last visited Apr. 6, 2015).
[7] *Id.*
[8] Lower St. Johns River TMDL Executive Committee, *Basin Management Action Plan: For the Implementation of Total Maximum Daily Loads for Nutrients Adopted by the Florida Department of Environmental Protection for the Lower St. Johns River Basin Main Stem*, 53 (October 2008), *available at* http://www.dep.state.fl.us/water/watersheds/docs/bmap/adopted-lsjr-bmap.pdf (last visited Apr. 6, 2015).
[9] *Supra* note 6, at 2.

increased discharges to purchase credits from existing dischargers so that overall pollutant loads to a watershed are not increased and water quality is preserved.[10]

Trading is authorized pursuant to s. 403.067, F.S., The Department of Environmental Protection (DEP) is in the process of rulemaking to amend the water quality credit trading rule to implement statewide trading and detail precisely how trades are to be conducted and tracked in the future.[11] The DEP has conducted four public workshops on the rule, two in late August 2014 to review potential rule concepts, and two in mid-January 2015 to discuss draft rule language. The public comment period following the most recent workshops closed in early February, but the DEP has accepted some subsequent comments. The DEP will consider all comments received and produce a final proposed rule for adoption in the near future.[12]

Variances

The Florida and Water Pollution Control Act was enacted in 1967.[13] The legislative declaration states, "[t]he pollution of the air and waters of this state constitute a menace to the public health and welfare; create public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of the air and water."[14]

The act provides the DEP with authority to control and prohibit the pollution of water and air and to establish rules to carry out the act. Section 403.201, F.S., allows the DEP to grant a variance from provisions of the act or adopted rules and regulations. A variance may be granted for any of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution;
- Compliance with the requirements of the variance will require extensive cost and time, therefore, a variance may be issued with a timetable for the actions required; or
- To relieve or prevent hardship. The variances granted under this provision are limited to 24 months. A variance granted for electrical power plant and transmission line siting, as described in Part II of ch. 403, F.S., may be granted for the life of the permit.

A variance is prohibited for the discharge of waste into state waters or for hazardous waste management that would result in the requirement being less stringent than an applicable federal requirement. Research, development, and demonstration permits under s. 403.70715, F.S., are exempt from this provision.[15]

Relief mechanisms may be included in a permit when the natural conditions for the impacted area results in limits that exceed what is authorized in the permit. The relief mechanisms include:

- A site specific alternative criteria for each water quality criteria;
- A variance or exemption for each water quality criteria;

[10] *Supra* note 6, at 2.
[11] Fla. Admin. Code R. 62-306 (2010).
[12] DEP, *Senate Bill 714 Agency Analysis* (Feb. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[13] Chapter 67-436, Laws of Fla.
[14] Section 403.21, F.S.
[15] Section 403.201, F.S.

- A variance or exemption for a public water system from the maximum contaminant level or treatments techniques;
- A variance from other permitting standards or conditions; or
- A major or minor exemption for an aquifer.[16]

Solid Waste Management Trust Fund

The DEP is responsible for implementing and enforcing the solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state.[17] Counties are responsible for operating solid waste disposal facilities, which are permitted through the DEP, in order to meet the needs of the incorporated and unincorporated areas of the county.[18]

Rule 62-701, F.A.C., establishes the standards for the construction, operation, and closure of a solid waste management facility. Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. The closure plan includes:

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

Section 403.7125, F.S., provides the statutory requirement that the owner or operator of a landfill is responsible for the closure of the landfill and is liable for its improper closure. The owner or operator is required to establish a fee to ensure financial resources are available for the closure of the landfill. Section 403.707(9), F.S., requires the same financial assurance responsibilities for the owner or operator. Sections 403.7125 and 403.707(9), F.S., allow the DEP to establish acceptable financial mechanisms that cover the cost of closure; however, neither section specifies that closure insurance is allowed.

Section 403.709, F.S., creates the Solid Waste Management Trust Fund, which is administered by the DEP. The trust fund requires that, of the money deposited:

- Up to 40 percent must be used for solid waste activities;
- Up to 4.5 percent must be for research and training programs;
- Up to 11 percent must be used for mosquito control, administered by the Department of Agriculture and Consumer Services;
- Up to 4.5 percent for Department of Transportation litter prevention control programs; and
- A minimum of 40 percent for funding a solid waste management grant program for activities related to recycling and waste reduction.

[16] Fla. Admin. Code R. 62-4.050 (2014).
[17] See s. 403.705, F.S.
[18] See s. 403.706, F.S.

Water Conservation and Water Resource Development

A person must apply for and obtain a consumptive use permit (CUP) from the applicable water management district (WMD) or the Department of Environmental Protection (DEP) before using surface or groundwater of the state, unless the person is solely using the water for domestic use. To obtain a CUP, an applicant must satisfy three requirements, commonly referred to as the "the three-prong test."

To satisfy the test, an applicant must establish that the proposed use of the water:

- Is for a "reasonable-beneficial use," meaning the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest;
- Will not interfere with any presently existing legal use of water; and
- Is consistent with the public interest.

Applicants may receive a CUP with duration of 20 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. Otherwise, the WMD or DEP may issue a CUP for a shorter duration which reflects the period for which such reasonable assurances can be provide.

When a CUP is issued for a 20 year duration, a WMD or DEP may require the permittee to provide a compliance report every ten years during the term of the permit to maintain reasonable assurance the conditions of the CUP continue to be met. Following review of a compliance report, the WMD or the DEP may modify the CUP to ensure that the use meets the conditions for issuance. Permit modifications resulting from review of the compliance report are not subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district.

In several WMDs, when economic conditions or population growth rates result in the actual water use being lower than permitted water use, a modification to reduce the permitted allocation may be made by the WMD only when there is no reasonable likelihood that the allocation will be needed during the permit term. However, in order to incentivize conservation of water, if actual water use is less than permitted water use due to documented implementation of water conservation measures, the WMD may not modify the permitted allocation due to these circumstances during the term of the permit.

In addition, s. 373.227, F.S., requires the DEP, in cooperation with the WMDs, to develop a statewide water conservation program for public water supply that:

- Encourages utilities to implement water conservation programs that are economically efficient, effective, affordable, and appropriate;
- Allows no reduction in, and increase where possible, utility-specific water conservation effectiveness over current programs;
- Is goal-based, accountable, measurable, and implemented collaboratively with water suppliers, water users, and water management agencies;
- Includes cost and benefit data on individual water conservation practices to assist in tailoring practices to be effective for the unique characteristics of particular utility service areas, focusing upon cost-effective measures;

- Uses standardized public water supply conservation definitions and standardized quantitative and qualitative performance measures for an overall system of assessing and benchmarking the effectiveness of water conservation programs and practices;
- Creates a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities;
- Develops a standardized water conservation planning process for utilities; and
- Develops and maintains a Florida-specific water conservation guidance document containing a menu of affordable and effective water conservation practices.

As part of an application for a CUP, a public water supply utility may propose a goal-based water conservation plan that is tailored to its individual circumstances. If the utility provides reasonable assurance that the plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the appropriate WMD, the WMD must approve the plan. The approved plan will satisfy water conservation requirements imposed as a condition of obtaining a CUP.

Clay Settling Areas

In Florida, phosphate mining occurs primarily in central Florida. There are 27 phosphate mines in the state covering more than 491,900 acres. The Florida Legislature required the reclamation of lands mined for phosphate after July 1, 1975. Reclamation standards for phosphate lands include contouring to safe slopes, providing for acceptable water quality and quantity, vegetation, and the return of wetlands to pre-mining type, nature, function, and acreage.[19] A significant byproduct of phosphate mining is clay, which is deposited in clay settling areas. Mining areas, including clay settling areas, must be returned to their natural state after the completion of mining operations.[20]

Section 378.208, F.S., provides that an operator of a mine shall provide appropriate financial assurance to the state that the reclamation of lands subject to the mandatory reclamation obligation will be completed in a timely manner. Compliance with the rate of reclamation established in s. 378.209 is deemed to be appropriate financial assurance. Section 378.208, F.S., provides that mine operators who are not in compliance with the rate of reclamation established in s 378.209, F.S., must post one or more forms of security, which are listed in s. 378.209(a)-(f), F.S.

Water Well Contractors License

Each person who engages in the business of a water well contractor must obtain a license from a WMD. Persons must submit an application to the WMD in which they reside or in which his or her principal place of business is located. In order to take the licensure exam, an applicant must be 18 years old; have two years of experience in constructing, repairing, or abandoning water wells; complete the an application form; and pay a nonrefundable fee.

[19] DEP, *Mandatory Phosphate Program*, http://www.dep.state.fl.us/water/mines/manpho.htm (last visited Mar. 15, 2015).
[20] Section 378.209(1), F.S.

An applicant must submit a letter from a water well contactor and a letter from a water well inspector employed by a governmental agency in order to demonstrate two years of experience in constructing, repairing, or abandoning water wells. Further, an applicant must submit a list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years.

Resource Recovery

Resource recovery means "the process of recovering materials or energy from solid waste, excluding those materials or solid waste under control of the Nuclear Regulatory Commission."[21] Section 403.713, F.S., provides that local governments my control the collection and disposal of solid waste and may institute a flow control ordinance for the purpose of ensuring that a resource recovery facility receives and adequate quantity of solid waste.

III. Effect of Proposed Changes:

Section 1 creates s. 373.227(5), F.S., to incentivize water conservation by prohibiting permitting agencies from modifying permitted water allocations during the term of the permit if actual water use is less than permitted solely due to documented implementation of water conservation measures beyond what is required in consumptive use permit. Water conservation measures may include, but are not limited to, those measures identified in best management practices for agricultural activities. The bill directs the Water Management Districts (WMDs) to adopt rules providing water conservation incentives, including permit extensions. The bill also prohibits the WMDs from reducing consumptive use permitted allocation amounts during the term of the permit which are for agricultural irrigation, if actual water use is less than permitted water use due to weather events, crop diseases, nursery stock availability, market conditions, or changes in crop type.

Section 2 amends s. 373.323, F.S., relating to the requirements for water well contractor license applicants to demonstrate two years of experience in constructing, repairing, or abandoning water wells. The change requires applicants to provide a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency. A letter from both will no longer be required.

Section 3 amends s. 373.467, F.S., to revise the membership requirements for the Harris Chain of Lakes Restoration Council. One member must have experience in environmental science or regulation, rather than an environmental engineer. The bill requires an attorney and an engineer, rather than people that have training in either discipline. It also clarifies that the two members, who are residents of the county, are not required to meet any of the other requirements of membership to be appointed to the council. As the statute is currently written, it appears those two members are prohibited from meeting any of the other requirements for membership. The bill provides that the Lake County legislative delegation may waive the qualifications for membership on a case-by-case basis for good cause. The bill provides that resignation by a council member or the failure of a member to attend three consecutive meetings without being excused by the chair of the committee results in a vacancy.

[21] Fla. Admin. Code R. 62-701.200 (2015).

Section 4 creates s. 373.705(5), F.S., to require the WMDs to promote expanded cost share criteria for additional conservation practices, such as soil and moisture sensors, and other irrigation improvements, water saving equipment, water-saving household fixtures, and software technologies that can achieve verifiable water conservation by providing water use information to utility customers.

Section 5 creates s. 378.209(4), F.S., amending the timing of land reclamations to exempt constructed clay settling areas where its beneficial use has been extended from the requirements in s. 378.209(1) (a)-(e) and s. 378.208, F.S. This revises a bonding requirement for clay settling areas so they can be consolidated and reduce construction costs.

Section 6 amends s. 403.067, F.S., to allow the Department of Environmental Protection (DEP) to authorize water quality credit trading for land set-asides and land-use modifications, including constructed wetlands and other water quality improvement projects, which reduce nutrient loads into nutrient-impaired surface waters. Currently, land set-asides and land-use modifications may also include changes in crop type, conservation easements, term-limited contracts for environmental services, and other similar activities.

Section 7 amends s. 403.201, F.S., to provide that the issuance of moderating provisions or requirements under state law is not prohibited by s. 403.201(2), regarding the prohibition of variances from any provision or requirement concerning discharges of waste into state waters, or hazardous waste management.

Section 8 amends s. 403.709, F.S., creating a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The bill authorizes the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

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

The bill requires the DEP to deposit funds received from an insurance company as reimbursement for the costs of closing or long-term care of the facility into the Solid Waste Landfill Closure account.

Section 9 provides an appropriation for the 2015-2016 fiscal year of $2,339,764 in nonrecurring funds from the Solid Waste Management Trust Fund within the DEP for the closing and long-term care of solid waste management facilities.

Section 10 creates s. 403.713(3), F.S., and clarifies that a resource recovery facilities does not include a landfill gas-to-energy system or facility for the purposes of exercising flow control authority.

Section 11 reenacts s. 373.414, F.S., for the purpose of incorporating the amendment to s. 403.201, F.S.

Section 12 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the federal government rescinds a delegated authority from the state, a permittee may have to obtain both state and federal permits rather than only a state permit for certain activities. The fiscal impact and number or parties that may be affected is unknown.

C. Government Sector Impact:

PCS/CS/SB 714 would require the Department of Environmental Protection (DEP) to establish a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closure and long-term care of solid waste management facilities. Funds for these closures would be reimbursed by insurance companies; however, in cases where the insurance company disputes actual expenses and does not reimburse the DEP for costs, the DEP Solid Waste Management Trust Fund would have incurred these costs.

Currently, there are five landfills that could be addressed related to the provisions of the bill. These include Coyote East in Walton County, Coyote Navarre in Santa Rosa County, Coyote West in Walton County, Cerny Road in Escambia County, and Williams Road in Hillsborough County. The DEP has estimated these closure costs to be $2,339,764 from

the Solid Waste Management Trust Fund and anticipates that these costs will be reimbursed.

The bill provides $2,339,764 in nonrecurring funds from the Solid Waste Management Trust Fund in the Fixed Capital Outlay-Agency Managed-Closing and Long-Term Care of Solid Waste Management Facilities appropriation category within the DEP for the closing and long-term care of solid waste management facilities.

VI. Technical Deficiencies:

On lines 56-57, the phrase "results in a vacancy on the council" may be misinterpreted and could be reworded to specify that resignation of a council member or the failure of a member to attend three consecutive meetings, without an excuse approved by the chair of the committee, results in the removal of the committee member.

VII. Related Issues:

According to the DEP:

- Section 1 of the bill does not expand or clarify the authority of existing law. Rules are under development that contain provisions allowed by the bill.
- Section 2 of the bill is ambiguous and could lead to an interpretation that a "moderating provision or requirement" could be granted from a state law, even when that law is necessary for the state's implementation of federally delegated or approved program. Such an interpretation could result in revocation of the state's approval to implement a federally delegated or approved program. In instances where a regulated entity's state approval operates as its federal license, such an interpretation could result in a regulated entity being unable to utilize state approval as a required federal license.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.227, 373.323, 373.705, 378.209, 403.067, 403.201, 403.709 and 403.713.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 14, 2015:
The committee substitute:

- Incentivizes water conservation by prohibiting permitting agencies from modifying permitted water allocations during the term of the permit under certain conditions;
- Directs Water Management Districts (WMDs) to adopt rules providing water conservation incentives, including permit extensions;
- Prohibits the WMDs from reducing consumptive use permitted allocation amounts during the term of the permit under certain conditions;

- Changes the requirement that water well contractor license applicants provide a letter from both a water well contractor and a water well inspector to just requiring a letter from either one;
- Requires the WMDs to promote expanded cost share criteria for additional conservation practices;
- Revises a bonding requirement for clay settling areas so they can be consolidated and reduce construction impacts;
- Provides an appropriation for the accelerated closure of solid waste management facilities; and
- Clarifies a definition of resource recovery facilities to not include a landfill gas-to-energy system or facility for the purposes of exercising flow control authority.

CS by Environmental Preservation and Conservation on April 8, 2015:

- Provides that a member of the Harris Chain of Lakes Restoration Council must be a person with experience in environmental science or regulation, rather than an environmental engineer;
- Clarifies that one member must be an attorney, and another must be an engineer, rather than a person with training in either discipline;
- Clarifies that the two residents may, but are not required to, meet any of the other requirements for membership;
- Provides the Lake County legislative delegation with the authority to waive the qualifications for membership on the council on a case-by-case basis if good cause is shown;
- Provides that resignation by a council member, or failure by a council member to attend three consecutive meetings without an excuse approved by the chair of the council, will result in a vacancy;
- Clarifies that land set-asides and land-use modifications that may qualify for water quality credits must not otherwise be required by state law or a permit; and
- Clarifies that the issuance of any moderating provisions or requirements under state law, which are otherwise prohibited under s. 403.201, F.S., are subject to any necessary approval by the U.S. Environmental Protection Agency.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Simpson) recommended the following:

Senate Amendment (with title amendment)

Between lines 119 and 120

insert:

Section 6. Present subsection (5) of section 373.227, Florida Statutes, is redesignated as subsection (7), and a new subsection (5) and a subsection (6) are added to that section, to read:

373.227 Water conservation; legislative findings and intent; objectives; comprehensive statewide water conservation

program requirements.—

(5) In order to incentivize water conservation, if actual water use is less than permitted water use due to documented implementation of water conservation measures beyond those required in the consumptive use permit, including, but not limited to, those measures identified in best management practices pursuant to s. 570.93, the permitted allocation may not be modified solely due to such water conservation during the term of the permit. In order to promote water conservation and the implementation of measures that produce significant water savings beyond what is required in a consumptive use permit, each water management district shall adopt rules providing water conservation incentives, which may include permit extensions.

(6) For consumptive use permits for agricultural irrigation, if actual water use is less than permitted water use due to weather events, crop diseases, nursery stock availability, market conditions, or changes in crop type, a district may not, as a result, reduce permitted allocation amounts during the term of the permit.

Section 7. Paragraph (b) of subsection (3) of section 373.323, Florida Statutes, is amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(3) An applicant who meets the following requirements shall be entitled to take the water well contractor licensure examination:

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience shall be demonstrated by providing:

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1. Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor or ~~and~~ a letter from a water well inspector employed by a governmental agency.

2. A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), by the applicant. The list shall also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

Section 8. Subsection (5) is added to section 373.705, Florida Statutes, to read:

373.705 Water resource development; water supply development.—

(5) The water management districts shall promote expanded cost-share criteria for additional conservation practices, such as soil and moisture sensors and other irrigation improvements, water-saving equipment, water-saving household fixtures, and software technologies that can achieve verifiable water conservation by providing water use information to utility customers.

Section 9. Subsection (4) is added to section 378.209,

261900

Florida Statutes, to read:

378.209 Timing of reclamation.—

(4) The rate of reclamation requirements in paragraphs (1)(a)-(e) and the requirements of s. 378.208 do not apply to constructed clay settling areas where its beneficial use has been extended.

Section 10. For the 2015-2016 fiscal year, the sum of $2,339,764 in nonrecurring funds from the Solid Waste Management Trust Fund in the Fixed Capital Outlay-Agency Managed-Closing and Long-Term Care of Solid Waste Management Facilities appropriation category is appropriated to the Department of Environmental Protection for the closing and long-term care of solid waste management facilities pursuant to s. 403.709(2), Florida Statutes.

Section 11. Subsection (3) is added to section 403.713, Florida Statutes, to read:

403.713 Ownership and control of solid waste and recovered materials.—

(3) For the purposes of exercising flow control authority under this section, a resource recovery facility does not include a landfill gas-to-energy system or facility.

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

And the title is amended as follows:

Delete line 21

and insert:

amendment made to s. 403.201, F.S., in a reference thereto; amending s. 373.227, F.S.; prohibiting water management districts from modifying permitted

98 allocation amounts under certain circumstances;
99 requiring water management districts to adopt rules to
100 promote water conservation incentives; amending s.
101 373.323, F.S.; revising eligibility requirements for
102 taking the water well contractor licensure
103 examination; amending s. 373.705, F.S.; requiring
104 water management districts to promote expanded cost-
105 share criteria for additional conservation practices;
106 amending s. 378.209, F.S.; excluding clay settling
107 areas from reclamation rate requirements under certain
108 circumstances; providing an appropriation; amending s.
109 403.713, F.S.; providing a limit on the exercise of
110 flow control authority for landfill gas-to-energy
111 facilities; providing an

By the Committee on Environmental Preservation and Conservation; and Senator Grimsley

592-03757A-15 2015714c1

A bill to be entitled

An act relating to environmental control; amending s. 373.467, F.S.; revising the qualifications for membership on the Harris Chain of Lakes Restoration Council; authorizing the Lake County legislative delegation to waive such membership qualifications for good cause; providing for council vacancies; amending s. 403.067, F.S.; authorizing land set-asides and land-use modifications that reduce nutrient loads into nutrient-impaired surface waters to be used under the water quality credit trading program; amending s. 403.201, F.S.; providing applicability of prohibited variances relating to certain discharges of waste; amending s. 403.709, F.S.; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund to be used for specified purposes; providing for the deposit of certain funds into the account; reenacting s. 373.414(17), F.S., relating to additional criteria for activities in surface waters and wetlands, to incorporate the amendment made to s. 403.201, F.S.; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsection (3) of section 373.467, Florida Statutes, are amended, to read:

373.467 The Harris Chain of Lakes Restoration Council.—There is created within the St. Johns River Water Management

592-03757A-15 2015714c1

District, with assistance from the Fish and Wildlife Conservation Commission and the Lake County Water Authority, the Harris Chain of Lakes Restoration Council.

(1)(a) The council shall consist of nine voting members~~,~~ which shall include~~:~~ a representative of waterfront property owners, a representative of the sport fishing industry, a person with experience in ~~an~~ environmental science or regulation ~~engineer~~, a person with training in biology or another scientific discipline, ~~a person with training as~~ an attorney, a physician, ~~a person with training as~~ an engineer, and two residents of the county who are ~~do~~ not required to meet any additional ~~of the other~~ qualifications for membership ~~enumerated in this paragraph~~, each to be appointed by the Lake County legislative delegation. The Lake County legislative delegation may waive the qualifications for membership on a case-by-case basis if good cause is shown. A ~~No~~ person serving on the council may not be appointed to a council, board, or commission of any council advisory group agency. The council members shall serve as advisors to the governing board of the St. Johns River Water Management District. The council is subject to ~~the provisions of~~ chapters 119 and 120.

(3) The council shall meet at the call of its chair, at the request of six of its members, or at the request of the chair of the governing board of the St. Johns River Water Management District. Resignation by a council member, or failure by a council member to attend three consecutive meetings without an excuse approved by the chair, results in a vacancy on the council.

Section 2. Paragraph (i) is added to subsection (8) of

section 403.067, Florida Statutes, to read:

403.067 Establishment and implementation of total maximum daily loads.—

(8) WATER QUALITY CREDIT TRADING.—

(i) Land set-asides and land-use modifications not otherwise required by state law or a permit, including constructed wetlands and other water quality improvement projects that reduce nutrient loads into nutrient-impaired surface waters, may be used under this subsection.

Section 3. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

403.201 Variances.—

(2) A ~~No~~ variance may not ~~shall~~ be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.70715. However, this subsection does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency.

Section 4. Subsection (5) is added to section 403.709, Florida Statutes, to read:

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

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

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

1. The facility operates or operated under a department permit;

2. The permittee provides proof of financial assurance for closure in the form of an insurance certificate;

3. The facility is deemed to be abandoned or was ordered to be closed by the department;

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

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

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

Section 5. For the purpose of incorporating the amendment made by this act to section 403.201, Florida Statutes, in a reference thereto, subsection (17) of section 373.414, Florida Statutes, is reenacted to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(17) The variance provisions of s. 403.201 are applicable to the provisions of this section or any rule adopted pursuant to this section. The governing boards and the department are

authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part and s. 373.4145.

Section 6. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Apr 14 2015
Meeting Date

SB 714
Bill Number (if applicable)

261900
Amendment Barcode (if applicable)

Topic Env Control /

Name Janet Bowman

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Email Janet_Bowman@TNC.org

Speaking: ☐ For ☐ Against ☑ Information

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

Representing The Nature Conservancy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

SB 714
Bill Number (if applicable)

261900
Amendment Barcode (if applicable)

Topic Environmental Control

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

Representing Watersmart Technologies

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14
Meeting Date

714
Bill Number (if applicable)

261900
Amendment Barcode (if applicable)

Topic Environmental Control

Name RANA BROWN

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing REPUBLIC SERVICES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/2015
Meeting Date

714
Bill Number (if applicable)

Topic Env. Control

Amendment Barcode (if applicable)

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Ground Water Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

714
Bill Number (if applicable)

Topic ENVIRONMENTAL CONTROL

Amendment Barcode (if applicable)

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA FARM BUREAU

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

SB 714
Bill Number (if applicable)

Topic ENVIRONMENTAL CONTROL

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing NATIONAL WASTE + RECYCLING ASSN - FL CHAPTER

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/CS/SB 914 (706156)
INTRODUCER:	Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Richter
SUBJECT:	Intrastate Crowdfunding
DATE:	April 16, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 914 authorizes intrastate crowdfunding as a mechanism for small businesses to raise up to $1 million annually in crowdfunding securities. Issuers and intermediaries engaging in intrastate crowdfunding would be subject to specified requirements under the Florida Securities and Investor Protection Act, which is administered by the Office of Financial Regulation (OFR).

The bill creates an intrastate exemption for securities meeting certain state and federal requirements. The issuer, intermediary, investor, and transaction must be located in Florida in accordance with the federal intrastate exemption. Like the federal Jumpstart Our Business Startups Act[1] (JOBS Act), as described below, the bill exempts an issuer and the offering for a 12-month period for an offering of up to $1 million of securities, requires registration for the intermediary, and mirrors the federal law's investment limitations for investors. The bill requires issuer notice filings and intermediary registration with the OFR, disclosures to investors, an escrow agreement for investor funds, a right of rescission, and financial reporting to investors and to the OFR. The bill also gives authority to the Financial Services Commission to adopt rules relating to notice-filings and registration forms, books and records, and investor protections.

The bill provides a total appropriation of $120,000 from the Regulatory Trust Fund within the OFR for information technology and workload issues. Related to revenues, issuers are subject to

[1] Public Law 112-106.

a $200 notice-filing fee and intermediaries are subject to a $200 registration fee. The impact on state revenues is indeterminate at this time.

The bill is effective October 1, 2015.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933

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

Securities Exchange Act of 1934

With the enactment of the Securities Exchange Act of 1934 (act), Congress created the Securities and Exchange Commission. The act provides the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self-regulatory organizations (SROs). The New York Stock Exchange, the NASDAQ Stock Market, and the Chicago Board of Options, and the Financial Industry Regulatory Authority (FINRA) are forms of SROs.

The act also identifies and prohibits certain types of conduct in the markets and provides the SEC with disciplinary powers over regulated entities and persons associated with them. The act also authorizes the SEC to require periodic reporting of information by companies with publicly traded securities. Generally, any person acting as a "broker" or "dealer" as defined by Section 3(4), and 3(a)(5) of the Securities Exchange Act of 1934, respectively, must be registered with the SEC and join a self-regulatory organization—the Financial Industry Regulatory Authority (FINRA), a national securities exchange, or both. Broker-dealers must also comply with state laws relating to registration requirements.

Intrastate Exemption

Section 3(a)(11) of the Securities Act of 1933 provides: "Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and business within or, if a corporation, incorporated by and doing business within, such State or Territory."[2] Prior to the enactment of the JOBS Act, states

[2] 15 USC s. 77c(a)(11). SEC Rule 147 (17 CFR s. 230.147) provides a "safe harbor" that guarantees compliance with Section 3(a)(11) if the conditions set forth in the rule are met.

such as Kansas and Georgia had already enacted their own securities offering exemption pursuant to the federal intrastate exemption under Section 3(a)(11) of the Securities Act of 1933 and SEC Rule 147,[3] in an effort to stimulate state-based offerings.

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

Unlike the Title III crowdfunding exemption of the JOBS Act, section 3(a)(11) does not limit the size of the offering, and unlike several other exemptions, section 3(a)(11) does not limit the number of investors or require that they be accredited. However, it is noted that section 3(a)(11) is strictly and narrowly construed, and if any of the securities are offered or sold to even one out-of-state person, the exemption may be lost and the company could be in violation of the Securities Act of 1933.[4] Broker-dealers that conduct their business on a purely intrastate basis are not required to register at the federal level.[5]

On April 10, 2014, the SEC issued interpretive guidance regarding section 3(a)(11) of the Securities Act of 1933 and the Internet.[6] The SEC indicated that use of a third-party Internet portal to promote an offering to residents of a single state would not violate the intrastate exemption, if the portal implemented "adequate measures," such as disclaimers, restrictive legends, and limited access to information about specific investment opportunities to persons who confirm they are residents of the relevant states by way of zip codes or address verification. Although the SEC's interpretive ruling is not conclusive, issuers generally would not be able to use popular social media platforms (such as Facebook, Twitter, or LinkedIn) to promote an intrastate crowdfunding offering, because these sites can be indiscriminately accessed by non-Florida residents. In addition, the issuer would likely need to ensure that an investor does not continue to use the portal after moving out of state.[7]

It is also important to note that section 3(a)(11) only provides an exemption from federal registration, but does not provide immunity from the antifraud or civil liability provisions of the federal securities laws, including investor rescission. States may still require registration for purely intrastate offerings involving a general solicitation of investors.

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[3] 17 CFR s. 230.147.
[4] U.S. SECURITIES & EXCHANGE COMMISSION, *Small Business and the SEC*, http://www.sec.gov/info/smallbus/qasbsec.htm#intrastate (last visited March 30, 2015).
[5] Section 15(a)(1) of the Securities Exchange Act provides an exemption from broker-dealer registration for a broker-dealer whose business is "exclusively intrastate and who does not make use of any facility of a national securities exchange." 15 U.S.C. 78o(a)(1).
[6] *See* Questions 141.03-141.05 (issued April 10, 2014), *available at* http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm (last visited March 30, 2015).
[7] Elizabeth J. Chandler, *SEC Staff Releases Compliance and Disclosure Interpretations Related to Intrastate Crowdfunding*, THE NATIONAL LAW REVIEW (Apr. 14, 2014), http://www.natlawreview.com/article/sec-securities-and-exchange-commission-staff-releases-compliance-and-disclosure-inte (last visited March 30, 2015).

JOBS Act and Crowdfunding

Title III of the JOBS Act (Title III) provides an interstate exemption from the registration requirements for crowdfunding transactions. Unlike other securities exemptions, Title III permits the issuer (fundraiser) to advertise and solicit sales of securities from the public and to sell the securities to non-accredited investors without first registering with the SEC or other regulatory authority. Title III also allows intermediaries, either registered broker-dealers or a new Internet-based platform entity (funding portals), to facilitate the online offer or sale of securities, subject to certain requirements, including registering with "with any applicable self-regulatory organization," as defined in the 1934 Securities Exchange Act. The SEC's proposed rule provides that this self-regulatory organization is FINRA, which is the only registered national securities association.[8] If the Title III conditions are met, funding portals are exempt from having to also register with the SEC.

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

In addition to the requirements discussed above, to qualify for the exemption, crowdfunding transactions by an issuer (including all entities controlled by or under common control with the issuer) must meet the following:

- The amount raised must not exceed $1 million in a 12-month period.
- Individual investments in a 12-month period are limited to: the greater of $2,000 or five percent of annual income or net worth, if annual income or net worth of the investor is less than $100,000; and ten percent of annual income or net worth (not to exceed an amount sold of $100,000), if annual income or net worth of the investor is $100,000 or more.
- An offering made in reliance on the exemption must be conducted through an intermediary that is either a registered broker or a registered "funding portal." Transactions must be conducted through an intermediary that either is registered as a broker or is registered as a new type of entity called a "funding portal," which would be subject to an exemption from broker registration.
- Issuers and intermediaries that facilitate transactions between issuers and investors in reliance on the crowdfunding exemption must provide certain disclosures to investors and potential investors and provide notices and other information to the SEC.

The JOBS Act requires the SEC to adopt rules to implement interstate crowdfunding. On October 23, 2013, the SEC proposed rules that would implement Title III. The SEC has advised that no Title III (interstate) crowdfunding is permitted until the SEC's rules are finalized; specifically, one cannot operate a crowdfunding intermediary or funding portal unless registered in accordance with the final rules.[9]

[8] SEC Proposed Regulation Crowdfunding Section 227.400.

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

Florida Regulation of Securities

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.[10] In Florida, the Securities and Investor Protection Act, chapter 517, F.S. (act), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the act and Chapter 69W, Florida Administrative Code. [11]

The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[12] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).[13] Failure to meet the requirements of these exemptions, can subject the issuer to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony in Florida.[14] Civil remedies under the act include rescission and damages.[15] In addition, issuers must comply with disclosure requirements in state and federal laws that provide potential investors with full and fair disclosures regarding the security.

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

III. Effect of Proposed Changes:

The bill creates an intrastate exemption for crowdfunding transactions from the registration requirements under s. 517.061, F.S., for the offer and sale of certain securities. The bill contains provisions from the JOBS Act and is limited to intrastate offerings under 15 U.S.C. s. 77c(a)(11). The bill provides the securities in crowdfunding transactions may be generally advertised and sold over the Internet and are not required to be sold through a registered broker-dealer when offered to the general public, but may be sold through an intermediary. The bill provides for the offer and sale of up to $1 million of unregistered securities per offering, and sets forth terms and conditions for issuers and intermediaries offering and selling such securities.

Crowdfunding Intermediaries, at http://www.sec.gov/divisions/marketreg/tmjobsact-crowdfundingintermediariesfaq.htm (last visited March 30, 2015).

[10] U.S. Securities and Exchange Commission, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited March 30, 2015).

[11] Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

[12] Section. 517.12, F.S.

[13] Section 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S., requires the broker or issuer to notify OFR that the security is registered with the SEC.

[14] Section 517.302(1), F.S.

[15] Section 517.211(3-5), F.S.

Section 1 amends s. 571.021, F.S., to define an intermediary to mean a natural person residing in this state, or a corporation, trust, partnership, association, or any other legal entity registered with the Secretary of State to do business in Florida, that represents an issuer in a transaction involving the offer or sale of securities under s. 517.061, F.S.

Section 2 amends s. 517.061, F.S., to provide that the offer or sale of a security by an issuer conducted in accordance with s. 517.0611, F.S., is exempt from registration.

Section 3 creates s. 517.0611, F.S., the Florida Intrastate Crowdfunding Exemption. An offer or sale of a security by an issuer is an exempt transaction under s. 517.061, F.S., if the offer or sale meets the requirements of this section. The exemption may not be used in conjunction with any other exemption under ss. 517.051 or 517.061, F.S. The offer or sale of the securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate exemptions in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and U. S. SEC Rule 147, 17 C.F.R. s. 230.147, adopted pursuant to the Securities Act of 1933.

Issuer Requirements

The issuer, to qualify for the intrastate crowdfunding exemption, must:

- Be a for-profit business entity formed under the laws of this state and be registered with the Secretary of State.
- Conduct transactions for the offering through a dealer or intermediary registered with the OFR.
- Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).
- Not be subject to a disqualification established by the commission or the OFR, or a disqualification described in s. 517.1611 F.S. or the U.S. SEC Rule 5069d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933.
- Not be a company with an undefined business operation, a company that lacks a business plan, or meets other conditions specified.
- Execute an escrow agreement with a financial institution. The issuer must also provide the OFR with a copy of the escrow agreement with such a financial institution. The escrow agreement must require that offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan. The agreement must also provide all investors will receive a full refund of their investment commitment if that target-offering amount is not raised by the date stated in the disclosure statement.
- Allow investors to cancel a commitment to invest within three business days before the offering deadline.

The issuer must submit a notice filing with the OFR at least ten days before the issuer commences an offering or the offering is displayed on a website. The notice must indicate that the issuer is conducting an offering in reliance upon this exemption. The notice must contain the

contact information of the issuer, identify key persons who will be involved in the offer or sale of securities on behalf of the issuer, and disclose the federally insured financial institution authorized to do business in this state in which investor funds will be deposited. Further, the notice must include an attestation under oath that the issuer and other key persons are not currently and have not been within the past ten years the subject of regulatory or criminal actions involving fraud or deceit. The notice must document that the issuer is organized under the laws of Florida and authorized to do business in Florida and include the target offering amount.

The issuer must provide a disclosure statement to investors and the dealer or intermediary, along with a copy to the OFR at the time the notice is filed, and make available to potential investors through the dealer or intermediary. This disclosure would include a description of the business of and financial condition of the issuer and the anticipated business plan of the issuer, information about the offering.

PCS/CS/SB 914 provides that the sum of all cash and other consideration received for all sales of the security in reliance upon this exemption must not exceed $1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Unless the investor is an accredited investor as defined by Rule 501 of Regulation D under the Securities Act of 1933, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this section during a 12-month period may not exceed:

- If the annual income and net worth of the investor are less than $100,000, the greater of $2,000, five percent of the annual income of the investor, or five percent of the net worth of the investor.
- If the annual income or net worth of the investor is $100,000 or more, the greater of $100,000, ten percent of the annual income of the investor, or ten percent of the net worth of the investor.

Intermediary Requirements:

An intermediary is subject to registration requirements as provided in **section 4** of the bill. The bill:

- Provide basic information on its platform regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The basic information shall include:
  - A description of the escrow agreement that the issuer has executed and the conditions for the release of such funds to the issuer in accordance with the agreement.
  - A description of whether financial information provided by the issuer has been audited by an independent certified public accountant.
- Maintain records of the offers and sales of securities made through its platform, as prescribed by commission rule, and provide access to such records upon request by the OIR.
- Verify, pursuant to commission rule, that an investor is a resident of Florida.
- Deposit and release investor funds in escrow pursuant to the escrow agreement executed by the issuer.
- Provide a monthly update for each offering, which is accessible on the intermediary's platform, and includes the date and amount of each sale of securities in the previous calendar month.

- Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with anti-money laundering requirements of 31 C.F.R. ch. X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 as they apply to brokers.

Sections 4 amends s. 517.12, F.S., by requiring an intermediary to register as a dealer or as an intermediary and pay a registration fee of $200 to the OFR. An intermediary or persons associated with an intermediary are subject to a criminal background check. Further, an intermediary or persons associated with an intermediary may not be subject to any disqualification described in s. 517.1611, F.S., or the SEC Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933.

Section 5 amends s. 517.121, F.S., to provide that an intermediary is subject to examination by the OFR and must maintain certain books and records.

Section 6 amends s. 517.161, F.S**.,** to provide the OFR with enforcement authority to take regulatory actions against an intermediary.

Section 7 provides a technical conforming change to s. 626.9911, F.S.

Section 8 appropriates $120,000 in nonrecurring funds from the Regulatory Trust Fund within the OFR to implement the bill.

Section 9 provides the act will take effect October 1, 2015.

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 bill creates a $200 notice-filing fee for issuers and a $200 registration fee for intermediaries.

B. Private Sector Impact:

The bill will provide start-up and small companies with another option for raising capital that would not be subject to securities registration with the OFR if certain requirements were met.

C. Government Sector Impact:

PCS/CS/SB 914 provides a total appropriation of $120,000 in nonrecurring funds from the Regulatory Trust Fund to implement the provisions of this bill. This includes an estimated $63,150 to update the licensure system and provide additional data storage, along with $56,850 for Other Personnel Services for temporary employees related to workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 517.021, 517.061, 517.12, and 626.9911.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 14, 2015:
The recommended CS/CS provides $120,000 in nonrecurring funds from the Regulatory Trust Fund to implement the act in addition to a technical, clarifying change.

Banking and Insurance on March 31, 2015:
The CS provides the following changes:

- Clarifies provisions to be consistent with the requirements of the federal JOBS Act and the intrastate exemption authorized under the Securities Act of 1933.
- Requires the issuer to file an irrevocable written consent to service of civil process with the OFR.
- Requires the issuer to provide a disclosure statement and a copy of the escrow agreement to the OFR that meets certain requirements.
- Clarifies intermediary registration requirements.
- Requires intermediary to maintain certain books and records as prescribed by commission rule and be subject to examination by the OFR.

- Provides technical and conforming changes.

B. Amendments:

None.

254474

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 1301

and insert:

the dealer, broker, or investment adviser, as and

635024

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 1439 and 1440
insert:

Section 8. For the 2015-2016 fiscal year, the sum of $120,000 in nonrecurring funds from the Regulatory Trust Fund is appropriated to the Office of Financial Regulation for the purpose of implementing this act.

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

635024

And the title is amended as follows:

Delete line 30

and insert:

F.S.; conforming a cross-reference; providing an appropriation; providing an

By the Committee on Banking and Insurance; and Senator Richter

597-03200-15 2015914c1

A bill to be entitled

An act relating to intrastate crowdfunding; amending s. 517.021, F.S.; conforming a cross-reference; defining the term "intermediary" for purposes of the Florida Securities and Investor Protection Act; amending s. 517.061, F.S.; exempting offers or sales of securities by certain issuers from registration requirements; creating s. 517.0611, F.S.; providing a short title; exempting the intrastate offering and sale of certain securities from certain regulatory requirements; providing applicability; providing registration and reporting requirements for issuers and intermediaries offering such securities; requiring the issuer to provide to the office a copy of a specified escrow agreement; limiting the aggregate amount of sales of such securities within a specified period; limiting the aggregate amount of sales to specified investors; requiring an issuer to produce and distribute an annual report to investors; requiring a notice-filing to be suspended under certain circumstances; specifying that fees collected become revenue of the state; requiring a qualified third party to hold certain funds in escrow; amending s. 517.12, F.S.; providing registration requirements for an intermediary; conforming a cross-reference; amending s. 517.121, F.S.; requiring an intermediary to comply with specified recordkeeping requirements; amending s. 517.161, F.S.; including an intermediary in the disciplinary provisions; amending s. 626.9911,

597-03200-15 2015914c1

F.S.; conforming a cross-reference; providing an effective date.

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

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

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

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

(13) "Intermediary" means a natural person residing in the state or a corporation, trust, partnership, association, or other legal entity registered with the Secretary of State to do business in the state which represents an issuer in a transaction involving the offer or sale of securities under s. 517.061.

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

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

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

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

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

(3) The isolated sale or offer for sale of securities when made by or on behalf of a vendor not the issuer or underwriter of the securities, who, being the bona fide owner of such securities, disposes of her or his own property for her or his own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a vendor of

securities not the issuer or underwriter of the securities if:

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

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

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

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

(5) The issuance of securities to such equity security holders or other creditors of a corporation, trust, or partnership in the process of a reorganization of such corporation or entity, made in good faith and not for the purpose of avoiding the provisions of this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

(6) Any transaction involving the distribution of the

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

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

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

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

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

(9) The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate

statutes in connection with mergers, share exchanges, consolidations, or sale of corporate assets.

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

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

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

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

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

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

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection

is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

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

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

2. Any trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any corporation specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

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

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

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

(c)1. For purposes of determining which offers and sales of

securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:

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

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

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

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

(12) The sale of securities by a bank or trust company

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

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

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

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

(16) The sale by or through a registered dealer of any

securities option if at the time of the sale of the option:

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

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

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

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

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

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

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

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

3. Securities of an insurance company, as that term is

defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended;

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

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

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

covered security, by order published in such manner as the office finds proper.

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

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

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

(a) The issuer of the security is actually engaged in business and is not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, any

unidentified person;

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

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

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

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

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

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

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

(e) The issuer of the security has a class of equity

securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:

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

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

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

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

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

517.0611 Intrastate crowdfunding.—

(1) This section may be cited as the "Florida Intrastate Crowdfunding Exemption."

(2) Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption under s. 517.051 or s.517.061.

(3) The offer or sale of securities under this section must

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

(4) An issuer must:

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

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

(c) Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).

(d) Not be a company with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

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

holding more than 20 percent of the shares of the issuer, is subject to this requirement.

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

(g) Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline.

(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt of the completed form, filing fee, and an irrevocable written consent to service of civil process, as provided for in s. 517.101, by the office. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

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

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

(c) Contain the name and contact information of the issuer.

(d) Identify any predecessors, owners, officers, directors, and control persons or any person occupying a similar status or performing a similar function of the issuer, including that person's title, his or her status as a partner, trustee, sole proprietor or similar role, and his or her ownership percentage.

(e) Identify the federally insured financial institution, authorized to do business in this state, in which investor funds will be deposited, in accordance with the escrow agreement.

(f) Require an attestation under oath that the issuer, its predecessors, affiliated issuers, directors, officers, and control persons, or any other person occupying a similar status or performing a similar function, are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit.

(g) Include documentation verifying that the issuer is organized under the laws of this state and authorized to do business in this state.

(h) Include the intermediary's website address where the issuer's securities will be offered.

(i) Include the target offering amount.

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

(7) The issuer must provide to investors and the dealer or

intermediary, along with a copy to the office at the time the notice is filed, and make available to potential investors through the dealer or intermediary, a disclosure statement containing material information about the issuer and the offering, including:

(a) The name, legal status, physical address, and website address of the issuer.

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

(c) A description of the business of the issuer and the anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

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

(f) The price to the public of the securities or the method for determining the price, provided that before the sale each investor receives in writing the final price and all required disclosures, with an opportunity to rescind the commitment to purchase the securities.

(g) A description of the ownership and capital structure of the issuer, including:

1. Terms of the securities being offered and each class of security of the issuer, including how those terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being

offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer;

2. A description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

3. The name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

4. How the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

5. The risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties.

(h) A description of the financial condition of the issuer.

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

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $100,000, but not more than $500,000, the description must include financial statements

prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the office, by rule, for such purpose.

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

(i) The following statement in boldface, conspicuous type on the front page of the disclosure statement:

These securities are offered under and will be sold in reliance upon an exemption from the registration requirements of federal and Florida securities laws. Consequently, neither the Federal Government nor the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss

of their entire investment.

(8) The issuer shall provide to the office a copy of the escrow agreement with a financial institution authorized to conduct business in this state. All investor funds must be deposited in the escrow account. The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed $1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding shares of any class or classes of securities or to an officer, director, partner, or trustee, or a person occupying a similar status, do not count toward this limitation.

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

(a) The greater of $2,000 or 5 percent of the annual income

or net worth of such investor, if the annual income or the net worth of the investor is less than $100,000.

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

(11) The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days of its fiscal year end, until no securities under this offering are outstanding. The annual reports must meet the following requirements:

(a) Include an analysis by management of the issuer of the business operations and the financial condition of the issuer, and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 percent or more of the issuer, including cash compensation earned since the previous report and on an annual basis, and any bonuses, stock options, other rights to receive securities of the issuer, or any affiliate of the issuer, or other compensation received.

(b) Disclose any material change to information contained in the disclosure statements which was not disclosed in a previous report.

(12)(a) A notice-filing under this section shall be summarily suspended by the office if the payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious

danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn.

(b) A notice-filing under this section shall be summarily suspended by the office if the issuer made a material false statement in the issuer's notice-filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office shall enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.221(3), and issue permanent bars under s. 517.221(4) to the issuer and all owners, officers, directors, and control persons, or any person occupying a similar status or performing a similar function of the issuer, including titles; status as a partner, trustee, sole proprietor, or similar roles; and ownership percentage.

(13) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a notice filing is withdrawn.

(14) An intermediary must:

(a) Take measures, as established by commission rule, to reduce the risk of fraud with respect to transactions, including verifying that the issuer is in compliance with the requirements of this section and, if necessary, denying an issuer access to

its platform if the intermediary believes it is unable to adequately assess the risk of fraud of the issuer or its potential offering.

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

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

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

(c) Obtain a zip code or residence address from each potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of this state.

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

(e) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (10).

(f) Direct the release of investor funds in escrow in accordance with subsection (4).

(g) Direct investors to transmit funds directly to the financial institution designated in the escrow agreement to hold

the funds for the benefit of the investor.

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

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

I understand and acknowledge that:

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

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

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

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

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

If I resell any of the securities I am acquiring in this offering to a person that is not a Florida resident within 9 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void.

(j) Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers, and an understanding of the risk of illiquidity.

(k) Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(l) Prohibit its directors and officers from having any financial interest in the issuer using its services.

(m) Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with anti-money laundering requirements of 31 C.F.R. ch. X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 as they

apply to brokers.

(15) An intermediary not registered as a dealer under s. 517.12(6) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation or based on the sale of securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

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

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

(16) All funds received from investors must be directed to the financial institution designated in the escrow agreement to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the financial institution designated to hold the funds to promptly refund the funds of the investor.

Section 4. Section 517.12, Florida Statutes, is amended to read:

517.12 Registration of dealers, associated persons,

intermediaries, and investment advisers.—

(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the office pursuant to the provisions of this section. The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to this chapter.

(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8) and (10).

(3) Except as otherwise provided in s. 517.061(11)(a)4., (13), (16), (17), or (19), the registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(12), (14), and (15).

(4) No investment adviser or associated person of an investment adviser or federal covered adviser shall engage in business from offices in this state, or render investment advice to persons of this state, by mail or otherwise, unless the federal covered adviser has made a notice-filing with the office pursuant to s. 517.1201 or the investment adviser is registered pursuant to the provisions of this chapter and associated persons of the federal covered adviser or investment adviser have been registered with the office pursuant to this section. The office shall not register any person or an associated person of a federal covered adviser or an investment adviser unless the federal covered adviser or investment adviser with which the

applicant seeks registration is in compliance with the notice-filing requirements of s. 517.1201 or is lawfully registered with the office pursuant to this chapter. A dealer or associated person who is registered pursuant to this section may render investment advice upon notification to and approval from the office.

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is notice-filed with the office pursuant to s. 517.1202.

(6) A dealer, associated person, or investment adviser, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including

contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all associated persons of the applicant to be employed in this state and the offices to which they will be assigned.

(7) The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15) shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to

subsection (15), submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) His or her full name, and any other names by which he or she may have been known, and his or her age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to his or her character, reputation, and financial responsibility.

(8) The commission or office may require the applicant or one or more principals or general partners, or natural persons exercising similar functions, or any associated person applicant to successfully pass oral or written examinations. Because any principal, manager, supervisor, or person exercising similar

functions shall be responsible for the acts of the associated persons affiliated with a dealer, the examination standards may be higher for a dealer, office manager, principal, or person exercising similar functions than for a nonsupervisory associated person. The commission may waive the examination process when it determines that such examinations are not in the public interest. The office shall waive the examination requirements for any person who has passed any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934 that relates to the position to be filled by the applicant.

(9)(a) All dealers, except securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, shall comply with the net capital and ratio requirements imposed pursuant to the Securities Exchange Act of 1934. The commission may by rule require a dealer to file with the office any financial or operational information that is required to be filed by the Securities Exchange Act of 1934 or any rules adopted under such act.

(b) The commission may by rule require the maintenance of a minimum net capital for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers and securities dealers registered as issuers of securities and investment advisers, or prescribe a ratio between net capital and aggregate indebtedness, to assure adequate protection for the investing public. The provisions of this section shall not apply to any investment adviser that maintains its principal place of business in a state other than this state, provided such investment adviser is registered in

the state where it maintains its principal place of business and is in compliance with such state's net capital requirements.

(10) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprints to be processed by the office. Such fee shall be determined by rule of the commission. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(11) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year

of expiration, such information as may be required by the commission, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(12)(a) The office may issue a license to a dealer, investment adviser, or associated person to evidence registration under this chapter. The office may require the return to the office of any license it may issue prior to issuing a new license.

(b) Every dealer, investment adviser, or federal covered adviser shall promptly file with the office, as prescribed by rules adopted by the commission, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer or investment adviser shall designate in writing to, and register with, the office a manager for each office the dealer or investment adviser has in this state.

(13) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser or by changes of any material fact or method of doing business shall be reported by written amendment in such form and at such time as the commission may specify. In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a

controlling interest in a registered dealer or investment adviser, such person or group shall submit an initial application for registration as a dealer or investment adviser prior to such purchase or acquisition. The commission shall adopt rules providing for waiver of the application required by this subsection where control of a registered dealer or investment adviser is to be acquired by another dealer or investment adviser registered under this chapter or where the application is otherwise unnecessary in the public interest.

(14) Every dealer or investment adviser registered or required to be registered or branch office notice-filed or required to be notice-filed with the office shall keep records of all currency transactions in excess of $10,000 and shall file reports, as prescribed under the financial recordkeeping regulations in 31 C.F.R. part 103, with the office when transactions occur in or from this state. All reports required by this subsection to be filed with the office shall be confidential and exempt from s. 119.07(1) except that any law enforcement agency or the Department of Revenue shall have access to, and shall be authorized to inspect and copy, such reports.

(15)(a) In order to facilitate uniformity and streamline procedures for persons who are subject to registration or notification in multiple jurisdictions, the commission may adopt by rule uniform forms that have been approved by the Securities and Exchange Commission, and any subsequent amendments to such forms, if the forms are substantially consistent with the provisions of this chapter. Uniform forms that the commission may adopt to administer this section include, but are not

limited to:

1. Form BR, Uniform Branch Office Registration Form, adopted October 2005.

2. Form U4, Uniform Application for Securities Industry Registration or Transfer, adopted October 2005.

3. Form U5, Uniform Termination Notice for Securities Industry Registration, adopted October 2005.

4. Form ADV, Uniform Application for Investment Adviser Registration, adopted October 2003.

5. Form ADV-W, Notice of Withdrawal from Registration as an Investment Adviser, adopted October 2003.

6. Form BD, Uniform Application for Broker-Dealer Registration, adopted July 1999.

7. Form BDW, Uniform Request for Broker-Dealer Withdrawal, adopted August 1999.

(b) In lieu of filing with the office the applications specified in subsection (6), the fees required by subsection (10), the renewals required by subsection (11), and the termination notices required by subsection (12), the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

(16) Except for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, every applicant for initial or renewal registration as a securities dealer and every person registered

as a securities dealer shall be registered as a broker or dealer with the Securities and Exchange Commission and shall be subject to insurance coverage by the Securities Investor Protection Corporation.

(17)(a) A dealer that is located in Canada, does not have an office or other physical presence in this state, and has made a notice-filing in accordance with this subsection is exempt from the registration requirements of this section and may effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

1. A person from Canada who is present in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States; or

2. A person from Canada who is present in this state and whose transactions are in a self-directed, tax-advantaged retirement plan in Canada of which the person is the holder or contributor.

(b) A notice-filing under this subsection must consist of documents the commission by rule requires to be filed, together with a consent to service of process and a nonrefundable filing fee of $200. The commission may establish by rule procedures for the deposit of fees and the filing of documents to be made by electronic means, if such procedures provide the office with the information and data required by this section.

(c) A Canadian dealer may make a notice-filing under this subsection if the dealer provides to the office:

1. A notice-filing in the form the commission requires by rule.

2. A consent to service of process.

3. Evidence that the Canadian dealer is registered as a dealer in the jurisdiction in which the dealer's main office is located.

4. Evidence that the Canadian dealer is a member of a self-regulatory organization or stock exchange in Canada.

(d) The office may issue a permit to evidence the effectiveness of a notice-filing for a Canadian dealer.

(e) A notice-filing is effective upon receipt by the office. A notice-filing expires on December 31 of the year in which the filing becomes effective unless the Canadian dealer has renewed the filing on or before that date. A Canadian dealer may annually renew a notice-filing by furnishing to the office such information as the office requires together with a renewal fee of $200 and the payment of any amount due and owing the office pursuant to any agreement with the office. Any Canadian dealer who has not renewed a notice-filing by the time a current notice-filing expires may request reinstatement of such notice-filing by filing with the office, on or before January 31 of the year following the year the notice-filing expires, such information as the commission requires by rule, together with the payment of $200 and a late fee of $200. A reinstatement of a notice-filing granted by the office during the month of January is effective retroactively to January 1 of that year.

(f) An associated person who represents a Canadian dealer who has made a notice-filing under this subsection is exempt from the registration requirements of this section and may effect transactions in securities in this state as permitted for a dealer under paragraph (a) if such person is registered in the jurisdiction from which he or she is effecting transactions into

this state.

(g) A Canadian dealer who has made a notice-filing under this subsection shall:

1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing.

2. Provide the office upon request with its books and records relating to its business in this state as a dealer.

3. Provide the office upon request notice of each civil, criminal, or administrative action initiated against the dealer.

4. Disclose to its clients in this state that the dealer and its associated persons are not subject to the full regulatory requirements under this chapter.

5. Correct any inaccurate information within 30 days after the information contained in the notice-filing becomes inaccurate for any reason.

(h) An associated person representing a Canadian dealer who has made a notice-filing under this subsection shall:

1. Maintain provincial or territorial registration in good standing.

2. Provide the office upon request with notice of each civil, criminal, or administrative action initiated against such person.

(i) A notice-filing may be terminated by filing notice of such termination with the office. Unless another date is specified by the Canadian dealer, such notice is effective upon receipt of the notice by the office.

(j) All fees collected under this subsection become the revenue of the state, except those assessments provided for

under s. 517.131(1), until the Securities Guaranty Fund has satisfied the statutory limits. Such fees are not returnable if a notice-filing is withdrawn.

(18) Every dealer or associated person registered or required to be registered with the office shall satisfy any continuing education requirements established by rule pursuant to law.

(19) The registration requirements of this section which apply to investment advisers and associated persons do not apply to a commodity trading adviser who:

(a) Is registered as such with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

(b) Advises or exercises trading discretion, with respect to foreign currency options listed and traded exclusively on the Philadelphia Stock Exchange, on behalf of an "appropriate person" as defined by the Commodity Exchange Act.

The exemption provided in this subsection does not apply to a commodity trading adviser who engages in other activities that require registration under this chapter.

(20) An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of $200. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures

provide the office with the information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided for in s. 517.101.

(a) The application must contain such information as the commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant's form and place of organization; and if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal

history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, that are required to be reported on a form adopted by commission rule submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission, by rule, or the office may require information about any applicant or person concerning such matters as:

1. His or her full name and any other names by which he or she may have been known and his or her age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c) The application must be amended within 30 days if any

information contained in the form becomes inaccurate for any reason.

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

(e) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of the fee of $200 and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by filing with the office on or before January 31 of the year following the year of expiration must submit the information that may be required by the commission, together with payment of the $200 fee and a late fee of $200. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(21)~~(20)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(22)(g) ~~s. 517.021(21)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

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

517.121 Books and records requirements; examinations.—

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

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

Section 6. Section 517.161, Florida Statutes, is amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person.—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by

the office if the office determines that such applicant or registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or any person directly or indirectly controlling the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made under this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with rendering investment advice or in connection with any sale of securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or in any practice involving the rendering of investment advice or the sale of securities which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in the rendering of investment advice or the sale of a security to such person;

(e) Has failed to account to persons interested for all money and property received;

(f) Has not delivered, after a reasonable time, to persons entitled thereto securities held or agreed to be delivered by the dealer, broker, intermediary, or investment adviser, as and when paid for, and due to be delivered;

(g) Is rendering investment advice or selling or offering for sale securities through any associated person not registered in compliance with the provisions of this chapter;

(h) Has demonstrated unworthiness to transact the business of dealer, investment adviser, intermediary, or associated person;

(i) Has exercised management or policy control over or owned 10 percent or more of the securities of any dealer, intermediary, or investment adviser that has been declared bankrupt, or had a trustee appointed under the Securities Investor Protection Act; or is, in the case of a dealer, intermediary, or investment adviser, insolvent;

(j) Has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication was withheld, a crime against the laws of this state or any other state or of the United States or of any other country or government which relates to registration as a dealer, investment adviser, issuer of securities, intermediary, or associated person; which relates to the application for such registration; or which involves moral turpitude or fraudulent or dishonest dealing;

(k) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit;

(l) Is of bad business repute;

(m) Has been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or by any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a violation of any federal or state

securities or commodities law or any rule or regulation promulgated thereunder, or any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association, or has been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries. For purposes of this subsection, the office may not deny registration to any applicant who has been continuously registered with the office for 5 years after the date of entry of such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order provided such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order has been timely reported to the office pursuant to the commission's rules; or

(n) Made payment to the office for a registration with a check or electronic transmission of funds that is dishonored by the applicant's or registrant's financial institution.

(2) The payment or anticipated payment of any amount from the Securities Guaranty Fund in settlement of a claim or in satisfaction of a judgment against an applicant or registrant constitutes prima facie grounds for the denial of the applicant's application for registration or the revocation of the registrant's registration.

(3) In the event the office determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of dealers and

associated persons; and denial, suspension, or revocation of the registration of a dealer, intermediary, or investment adviser shall also deny, suspend, or revoke the registration of all her or his associated persons.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, or unincorporated association, if any member of the partnership or any officer, director, or ultimate equitable owner of the corporation or association has committed any act or omission which would be cause for denying, revoking, restricting, or suspending the registration of an individual dealer, investment adviser, intermediary, or associated person. As used in this subsection, the term "ultimate equitable owner" means a natural person who directly or indirectly owns or controls an ownership interest in the corporation, partnership, association, or other legal entity however organized, regardless of whether such natural person owns or controls such ownership interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(5) The office may deny any request to terminate or withdraw any application or registration if the office believes that an act which would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

(6) Registration under s. 517.12 may be denied or any registration granted may be suspended or restricted if an applicant or registrant is charged, in a pending enforcement

action or pending criminal prosecution, with any conduct that would authorize denial or revocation under subsection (1). Registration under s. 517.12 may be suspended or restricted if a registrant is arrested for any conduct that would authorize revocation under subsection (1).

(a) Any denial of registration ordered under this subsection shall be without prejudice to the applicant's ability to reapply for registration.

(b) Any order of suspension or restriction under this subsection shall:

1. Take effect only after a hearing, unless no hearing is requested by the registrant or unless the suspension or restriction is made in accordance with s. 120.60(6).

2. Contain a finding that evidence of a prima facie case supports the charge made in the enforcement action or criminal prosecution.

3. Operate for no longer than 10 days beyond receipt of notice by the office of termination with respect to the registrant of the enforcement action or criminal prosecution.

(c) For purposes of this subsection:

1. The term "enforcement action" means any judicial proceeding or any administrative proceeding where such judicial or administrative proceeding is brought by an agency of the United States or of any state to enforce or restrain violation of any state or federal law, or any disciplinary proceeding maintained by the Financial Industry Regulatory Authority, the National Futures Association, or any other similar self-regulatory organization.

2. An enforcement action is pending at any time after

notice to the applicant or registrant of such action and is terminated at any time after entry of final judgment or decree in the case of judicial proceedings, final agency action in the case of administrative proceedings, and final disposition by a self-regulatory organization in the case of disciplinary proceedings.

3. A criminal prosecution is pending at any time after criminal charges are filed and is terminated at any time after conviction, acquittal, or dismissal.

Section 7. Paragraph (b) of subsection (4) of section 626.9911, Florida Statutes, is amended to read:

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

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

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 1302
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Evers
SUBJECT:	Contaminated Sites
DATE:	April 13, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1302 amends ss. 376.30701 and 376.81, F.S., to provide clarifying language and allow for additional considerations in the use of risk-based corrective action (RBCA) in contamination cleanup and brownfield site rehabilitation. It authorizes the Department of Environmental Preservation (DEP) to use alternative cleanup target levels without requiring institutional controls in remediating contaminated sites under s. 376.30701, F.S. The bill amends ss. 376.301, F.S. and 376.79, F.S., to provide definitions for "background concentration" and "long-term natural attenuation." The bill also makes conforming changes to correct cross references related to RBCA.

The DEP will experience a positive, indeterminate fiscal impact due to reduced costs to remediate contaminated sites and brownfields that are funded by a state cost-share agreement. The DEP will have nominal costs associated with rulemaking.

The bill is effective July 1, 2015.

II. Present Situation:

Risk-Based Corrective Action

Risk-based corrective action (RBCA) (pronounced "Rebecca") is a decision-making process used to assess and respond to incidents of contamination. The American Society of Materials and

Testing established RBCA in 1994 based on guidance from the U.S. Environmental Protection Agency (EPA), which directs states to consider the current and prospective use of groundwater and the relative risk to human health and the environment when remediating contaminated sites.[1]

The RBCA process uses a tiered approach that couples site assessment and response actions with human health, public safety, and environmental risk assessment to determine the extent and urgency of corrective action used in remediating contaminated sites. Alternative cleanup target levels,[2] institutional[3] and engineering controls,[4] and remediation by natural attenuation[5] are RBCA strategies used on a case-by-case basis that allow the use of cost-effective remediation measures in lieu of conventional cleanup technologies. RBCA is implemented in all 50 states for the remediation of contaminated sites.[6]

RBCA principles were officially introduced in Florida in 1995 by the Florida Petroleum Efficiency Task Force that recommended them to remediate contaminated petroleum sites. Section 376.3071(5)(b), F.S., was created in 1996 and specifies that the Department of Environmental Protection (DEP) must incorporate RBCA principles to achieve protection of the public health, safety, and welfare, water resources, and the environment in a cost-effective manner. The use of RBCA was later expanded to the state's dry cleaning site remediation program under s. 376.3078, F.S., and the brownfields program under s. 376.81, F.S.

Section 376.30701, F.S., was created in 2003 to apply RBCA principles to all contaminated sites (referred to as "Global RBCA") resulting from a discharge of pollutants when site rehabilitation is required pursuant to chs. 376 and 403, F.S. The law requires the DEP to develop a site rehabilitation program by rule that uses RBCA concepts already developed for the petroleum cleanup, brownfield, and dry cleaning programs. Specifically, the law requires the DEP to establish:

- Cleanup target levels in soil and groundwater using the one in one million cancer risk for carcinogenic constituents;
- Cleanup target levels for groundwater, surface water, and soil using a hazard index of one for non-carcinogenic constituents;
- Cleanup target levels for groundwater based on nuisance, taste, sight, smell, and aesthetic considerations; and
- Alternative cleanup target levels in conjunction with institutional and engineering controls.

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[1] EPA, *Use of Risk-Based Decision-Making in UST Corrective Action Programs, OSWER Directive 9610.17* (1995), http://epa.gov/swerust1/directiv/od961017.htm (last visited Mar. 27, 2015).
[2] Section 37.301(7), F.S., defines "cleanup target levels" as "the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete."
[3] Section 376.301(21), F.S., defines "institutional control" as "the restriction on use or access to a site to eliminate or minimize exposure to petroleum products' chemicals of concern, dry cleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements."
[4] Section 376.301(16), F.S., defines "engineering controls" as "modifications to a site to reduce or eliminate the potential for exposure to petroleum products' chemicals of concern, dry cleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls."
[5] Section 376.301(24), F.S., defines "natural attenuation" as a "verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization."
[6] *Supra* note 1.

The law also requires the DEP to consider:

- Relocating a compliance point away from the contamination source area to the edge of the plume or property boundary to allow for natural attenuation;
- The additive,[7] synergistic,[8] and antagonistic[9] effects of contaminants;
- The current and projected land use of the site;
- The current and projected use of groundwater and surface water
- The exposed population; and
- The rate of plume migration.

The DEP adopted Rule 62-780, F.A.C., in 2005, to implement these provisions and provide the procedures necessary to implement site rehabilitation for all sites using RBCA criteria. Rule 62-780.150, F.A.C., specifies the rule must be administered in conjunction with Rule 62-777, F.A.C., which provides the default groundwater, surface water and soil cleanup target levels, as well as the natural attenuation default concentrations for groundwater, in order to determine the appropriate cleanup target levels for a contaminated site.

No Further Action

Rule 62-780.680, F.A.C., implements RBCA principles to provide a three-tiered approach to close contaminated sites and issue a No Further Action (NFA) order. The first tier is the Risk Management Option Level I, which grants an NFA without institutional controls or engineering controls if the following conditions are met:

- Free product is not present or free product removal is not feasible and there is no risk of fire or explosion;
- Contaminated soil is not present in the unsaturated zone; and
- Soil data indicates the contaminants do not exceed the default cleanup target levels or background concentrations.[10]

The second tier is the Risk Management Option Level II, which grants an NFA with institutional controls and engineering controls, if appropriate, if the controls are protective of human health, public safety, and the environment and agreed to by the property owner and:

- Free product is not present or free product removal is not feasible and there is no risk of fire or explosion
- Alternative cleanup target levels have been approved by the DEP; and
- Soil data indicates the contaminant concentrations do not exceed the alternative cleanup target levels.[11]

[7] Section 376.301(2), F.S., defines "additive effects" as "a scientific principle that the toxicity that occurs as a result of exposure is the sum of the toxicities of the individual chemicals to which the individual is exposed."
[8] Section 376.301(44), F.S., defines "synergistic effects" as "a scientific principle that the toxicity that occurs as a result of exposure is more than the sum of the toxicities of the individual chemicals to which the individual is exposed."
[9] Section 376.301(3), F.S., defines "antagonistic effects" as "a scientific principle that the toxicity that occurs as a result of exposure is less than the sum of the toxicities of the individual chemicals to which the individual is exposed."
[10] Fla. Admin. Code R. 62-780.680(1), (2013).
[11] Fla. Admin. Code R. 62-780.680(2), (2013).

The third tier is the Risk Management Option Level III, which grants an NFA with institutional controls and engineering controls if the controls are protective of human health, public safety, and the environment and agreed to by the property owner and:

- Free product is not present or free product removal is not feasible and there is no risk of fire or explosion; or
- Soil data indicates the contaminant concentrations do not exceed alternative cleanup target levels, which are established using the Human Health Risk Assessment and are based on exposure, toxicity, and other relevant public health information.[12]

Alternative Cleanup Target Levels

Section 376.30701(2)(g)3., F.S., authorizes the DEP to approve alternative cleanup target levels in conjunction with institutional and engineering controls. Alternative cleanup target levels are established using site specific data, modeling results, risk assessment studies, toxicity assessments, exposure assessments, and any other relevant public health information.[13] The DEP may approve alternative cleanup target levels once the responsible party has demonstrated that human health, public safety, and the environment are protected based on these factors. The law specifies that alternative cleanup target levels may only be established on a site specific basis under careful evaluation by the DEP.

Natural Attenuation

Rule 62-780.690, F.A.C., allows for natural attenuation depending on the individual site characteristics if human health, public safety, and the environment are protected. "Natural attenuation" is defined as, "a verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization."[14] The criteria to allow for natural attenuation monitoring are:

- Free product is not present or free product removal is not feasible and there is no risk of fire or explosion;
- Contaminated soil is not present in the unsaturated zone;
- Contaminants present in the groundwater above background concentrations or applicable cleanup target levels are not migrating beyond the temporary compliance point or vertically;
- The physical, chemical, and biological characteristics of each contaminant and its transformation product are conducive to natural attenuation;
- The available data shows an overall decrease in contamination; and
- One of the following are met:
  - The site is expected to achieve NFA criteria in five years or less, background concentrations or the applicable cleanup target levels are not exceeded at the temporary point of compliance, and contamination concentrations do no exceed the criteria in Rule 62-777, F.A.C.; or
  - Appropriateness of natural attenuation is demonstrated by:

[12] Fla. Admin. Codes Rs. 62-780.680(3) (2013) and 62-780.650 (2013). *See also* EPA, *Human Health Risk Assessment*, http://www.epa.gov/risk_assessment/health-risk.htm (last visited Mar. 27, 2015).
[13] Fla. Admin. Codes R. 62-780.650 (2013).
[14] Section 376.301(24), F.S.

- A technical evaluation of groundwater and soil characteristics that confirms the contaminants have the capacity to degrade under site-specific conditions; and
- A scientific evaluation of the plume migration, the estimate of the annual reduction in contaminant concentrations in monitoring wells, and an estimate of the time required to achieve NFA status.

The Brownfields Redevelopment Act

The term "brownfield" came into existence in the 1970s and originally referred to any previously developed property, regardless of any contamination issues. The term, as it is currently used, originated in 1992 during a U.S. Congressional field hearing and is defined by the U.S. Environmental Protection Agency (EPA) as, "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."[15] In 1995, the EPA created the Brownfields Program in order to manage contaminated property through site remediation and redevelopment. The program was designed to provide local communities access to federal funds allocated for redevelopment, including environmental assessments and cleanups, environmental health studies, and environmental training programs.[16]

In 1997, the Florida Legislature enacted the Brownfields Redevelopment Act (Act).[17] The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites in order to improve public health and reduce environmental hazards.[18] The Act provides liability protection for program participants who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997. Since the inception of the program in 1997, 64 contaminated sites have been cleaned and 362 sites have been designated brownfield area.[19]

III. Effect of Proposed Changes:

Sections 1 and 3 amend ss. 376.301 and 376.79, F.S., respectively, to define "background concentration" as "the concentration of contaminants naturally occurring or resulting from the anthropogenic impacts unrelated to the discharge of pollutants or hazardous substances at a contaminated site undergoing site rehabilitation." This allows the Department of Environmental Protection (DEP) to consider anthropogenic contamination that is not associated with the discharge that is being remediated and may lead to an alternative cleanup target levels.

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[15] Robert A. Jones and William F. Welsh, *Michigan Brownfield Redevelopment Innovation: Two Decades of Success*, 2 (Sept. 2010), *available at* http://www.miseagrant.umich.edu/downloads/focus/brownfields/10-201-EMU-Final-Report.pdf (last visited Apr. 1, 2015).

[16] The Florida Brownfields Association, *Brownfields 101*, 2, *available at* http://c.ymcdn.com/sites/www.floridabrownfields.org/resource/resmgr/imported/Brownfields101.pdf (last visited Apr. 1, 2015).

[17] Chapter 376.77, F.S.

[18] DEP, *Florida Brownfields Redevelopment Act-1998 Annual Report*, 1 (1998), *available at* http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/leginfo/1998/98final.pdf (last visited Apr. 1, 2015).

[19] *Supra* note 16.

It also defines "long-term natural attenuation" as "natural attenuation approved by the DEP as a site rehabilitation program task for a period of more than five years."

Sections 2 and 4 amend ss. 376.30701 and 376.81 F.S., related to contaminated sites and the brownfield program, respectively, to require the DEP to establish rules for the use of long-term natural attenuation, which will allow contaminated sites that are currently in natural attenuation to remain in natural attenuation longer than five years.

The bill adds the term "interactive" and rearranges the terms additive, synergistic, and antagonistic effects to clarify that these effects should all be considered equally. Recent toxicological studies reveal a better understanding of synergistic and antagonistic effects; therefore, these terms may now be considered equal to additive effects.

The bill allows the DEP to establish alternative cleanup target levels based on anthropogenic concentrations for contamination and clarifies that the use of anthropogenic background concentrations is appropriate.

The bill revises the cleanup target levels for surface water that is exposed to contaminated groundwater. It allows the cleanup target levels to be based on the groundwater standard when it is demonstrated the groundwater contaminants did not cause water quality exceedances in surface water.

The bill amends s. 376.30701(2)(g)3., F.S., to allow the use of alternative cleanup target levels that do not require institutional controls if:

- The only cleanup target levels exceeded are the groundwater cleanup target levels derived from nuisance, taste, smell, sight or aesthetic factors;
- Concentrations of all contaminants meet state water quality standards or minimum criteria, based on the protection of human health, public safety, and the environment;
- All of the groundwater cleanup target levels established as state water quality standards are met at the property boundary;
- The responsible party has demonstrated that the contaminants will not migrate beyond the property boundary at concentrations that exceed the groundwater cleanup target levels established as state water quality standards;
- The property has access to and is using an offsite water supply, and an unplugged private well is not used for domestic purposes; and
- The property owner does not object to the NFA proposal submitted to the DEP or to the local pollution control program.

In establishing alternative cleanup target levels for soil and groundwater in ss. 376.30701 and 376.81, F.S, the bill specifies that any relevant data and information, risk assessment modeling results, and results from probabilistic risk assessment modeling may be used. The bill allows the DEP to consider an alternative cleanup target levels based on comprehensive assessments and information.

Sections 5 and 6 amend ss. 196.1995 and 288.1175, F.S., respectively, to correct cross references related to the DEP's brownfields program.

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 provides an indeterminate positive fiscal impact to those financially responsible for the cleanup of contaminated site and brownfields.

C. Government Sector Impact:

The DEP will incur a nominal, non-recurring cost associated with rulemaking to amend Rules 62-780, F.A.C.[20] No additional funding is needed as a result of this fiscal impact.

The DEP will experience a positive, indeterminate fiscal impact as the costs to remediate contaminated sites and brownfields that are funded by a state cost-share agreement are reduced.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 376.301, 376.30701, 376.79, and 376.81.

[20] DEP, *Senate Bill 1302 Agency Analysis*, 5-6 (Feb. 18, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[21] *Id*.

IX. Additional Information:

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

CS by Environmental Preservation and Conservation on March 31, 2015:
The CS amends s. 376.79, F.S., to provide definitions for "background concentration" and "long-term natural attenuation" related to the Brownfield Redevelopment Act. The bill amends s. 376.81, F.S., to provide clarifying language and include the following additional RBCA provisions in brownfield site rehabilitation:

- The DEP must establish rules for the use of long-term natural attenuation at brownfield sites;
- The terms additive, synergistic, and antagonistic effects should all be considered equally;
- Cleanup target levels may not exceed background concentrations for a contaminant;
- Cleanup target levels must be based on the groundwater standard when it is demonstrated the groundwater contaminants did not cause water quality exceedances in surface water; and
- Any relevant data and information, risk assessment modeling results, and results from probabilistic risk assessment modeling may be used in establishing alternative cleanup target levels.

The CS also makes conforming changes to correct cross references related to RBCA.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Evers

592-03278-15 20151302c1

A bill to be entitled

An act relating to contaminated sites; amending s. 376.301, F.S.; defining the terms "background concentration" and "long-term natural attenuation"; amending s. 376.30701, F.S.; requiring the Department of Environmental Protection to include protocols for the use of long-term natural attenuation where site conditions warrant; requiring specified interactive effects of contaminants to be considered as cleanup criteria; revising how cleanup target levels are applied where surface waters are exposed to contaminated groundwater; authorizing the use of relevant data and information when assessing cleanup target levels; providing that institutional controls are not required under certain circumstances if using alternative cleanup target levels; amending s. 376.79, F.S.; defining the terms "background concentration" and "long-term natural attenuation"; amending s. 376.81, F.S.; adding further criteria to brownfield site and brownfield areas contamination cleanup criteria; amending ss. 196.1995 and 288.1175, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (4) through (22) of section 376.301, Florida Statutes, are redesignated as subsections (5) through (23), respectively, present subsections (23) through

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(48) of that section are redesignated as subsections (25) through (50), respectively, and new subsections (4) and (24) are added to that section, to read:

376.301 Definitions of terms used in ss. 376.30-376.317, 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and 376.75, unless the context clearly requires otherwise, the term:

(4) "Background concentration" means the concentration of contaminants naturally occurring or resulting from the anthropogenic impacts unrelated to the discharge of pollutants or hazardous substances at a contaminated site undergoing site rehabilitation.

(24) "Long-term natural attenuation" means natural attenuation approved by the department as a site rehabilitation program task for a period of more than 5 years.

Section 2. Subsection (2) of section 376.30701, Florida Statutes, is amended to read:

376.30701 Application of risk-based corrective action principles to contaminated sites; applicability; legislative intent; rulemaking authority; contamination cleanup criteria; limitations; reopeners.—

(2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.—It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. By July 1, 2004, the secretary of the department shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program, including a voluntary site rehabilitation program, and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing

these rules, the department shall apply, to the maximum extent feasible, a risk-based corrective action process to achieve protection of human health and safety and the environment in a cost-effective manner based on the principles set forth in this subsection. These rules shall prescribe a phased risk-based corrective action process that is iterative and that tailors site rehabilitation tasks to site-specific conditions and risks. The department and the person responsible for site rehabilitation are encouraged to establish decision points at which risk management decisions will be made. The department shall provide an early decision, when requested, regarding applicable exposure factors and a risk management approach based on the current and future land use at the site. These rules must ~~shall also~~ include protocols for the use of natural attenuation, including long-term natural attenuation where site conditions warrant, the use of institutional and engineering controls, and the issuance of "No Further Action" orders. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program, including a voluntary site rehabilitation program, must:

(a) Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure. The physical, chemical, and biological characteristics of each contaminant must be considered in order to determine the feasibility of a risk-based corrective action assessment.

(b) Establish the point of compliance at the source of the contamination. However, the department is authorized to

temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may ~~also is authorized~~, pursuant to criteria provided in this section, ~~to~~ temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. When temporarily extending the point of compliance beyond the property boundary, it cannot be extended further than the lateral extent of the plume, if known, at the time of execution of a cleanup agreement, if required, or the lateral extent of the plume as defined at the time of site assessment. Temporary extension of the point of compliance beyond the property boundary, as provided in this paragraph, must include actual notice by the person responsible for site rehabilitation to local governments and the owners of any property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons receiving notice pursuant to this paragraph shall have the opportunity to comment within 30 days after receipt of the notice. Additional notice concerning the status of natural attenuation processes shall be similarly provided to persons receiving notice pursuant to this paragraph every 5 years.

(c) Ensure that the site-specific cleanup goal is that all

contaminated sites being cleaned up pursuant to this section ultimately achieve the applicable cleanup target levels provided in this subsection. In the circumstances provided in this subsection, and after constructive notice and opportunity to comment within 30 days after receipt of the notice to local government, owners of any property into which the point of compliance is allowed to extend, and residents of any property into which the point of compliance is allowed to extend, the department may allow concentrations of contaminants to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if human health, public safety, and the environment are protected.

(d) Allow the use of institutional or engineering controls at contaminated sites being cleaned up pursuant to this section, where appropriate, to eliminate or control the potential exposure to contaminants of humans or the environment. The use of controls must be preapproved by the department and only after constructive notice and opportunity to comment within 30 days after receipt of notice is provided to local governments, owners of any property into which the point of compliance is allowed to extend, and residents on any property into which the point of compliance is allowed to extend. When institutional or engineering controls are implemented to control exposure, the removal of the controls must have prior department approval and must be accompanied by the resumption of active cleanup, or other approved controls, unless cleanup target levels under this section have been achieved.

(e) Consider the interactive ~~additive~~ effects of

contaminants, including additive, synergistic, and antagonistic effects. ~~The synergistic and antagonistic effects shall also be considered when the scientific data become available.~~

(f) Take into consideration individual site characteristics, which shall include, but not be limited to, the current and projected use of the affected groundwater and surface water in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

(g) Apply state water quality standards as follows:

1. Cleanup target levels for each contaminant found in groundwater shall be the applicable state water quality standards. Where such standards do not exist, the cleanup target levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall apply the following, as appropriate, in establishing the applicable cleanup target levels: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; and nuisance, organoleptic, and aesthetic considerations. However, the department may not ~~shall not~~ require site rehabilitation to achieve a cleanup target level for any individual contaminant that is more stringent than the site-specific~~, naturally occurring~~ background concentration for that contaminant.

2. Where surface waters are exposed to contaminated

groundwater, the cleanup target levels for the contaminants must ~~shall~~ be based on the more protective of the groundwater or surface water standards as established by department rule, unless it has been demonstrated that the contaminants do not cause or contribute to the exceedance of applicable surface water quality criteria. In such circumstance, the point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

3. Using risk-based corrective action principles, the department shall approve alternative cleanup target levels in conjunction with institutional and engineering controls, if needed, based upon an applicant's demonstration, using site-specific or other relevant data and information, risk assessment modeling results, including results from probabilistic risk assessment modeling, risk assessment studies, risk reduction techniques, or a combination thereof, that human health, public safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the standard. In determining whether it is appropriate to establish alternative cleanup target levels at a site, the department must consider the effectiveness of source removal, if any, that has been completed at the site and the practical likelihood of the use of low yield or poor quality groundwater, the use of groundwater near marine surface water bodies, the current and projected use of the affected groundwater in the vicinity of the site, or the use of groundwater in the immediate vicinity of the

contaminated area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, provided human health, public safety, and the environment are protected. Groundwater resource protection remains the ultimate goal of cleanup, particularly in light of the state's continued growth and consequent demands for drinking water resources. The Legislature recognizes the need for a protective yet flexible cleanup approach that risk-based corrective action provides. Only where it is appropriate on a site-specific basis, using the criteria in this paragraph and careful evaluation by the department, shall proposed alternative cleanup target levels be approved. If alternative cleanup target levels are used, institutional controls are not required if:

a. The only cleanup target levels exceeded are the groundwater cleanup target levels derived from nuisance, organoleptic, or aesthetic considerations;

b. Concentrations of all contaminants meet the state water quality standards or the minimum criteria, based on the protection of human health, public safety, and the environment, as provided in subparagraph 1.;

c. All of the groundwater cleanup target levels established pursuant to subparagraph 1. are met at the property boundary;

d. The person responsible for site rehabilitation has demonstrated that the contaminants will not migrate beyond the property boundary at concentrations that exceed the groundwater cleanup target levels established pursuant to subparagraph 1.;

e. The property has access to and is using an offsite water supply, and an unplugged private well is not used for domestic purposes; and

f. The property owner does not object to the "No Further Action" proposal to the department or the local pollution control program.

(h) Provide for the department to issue a "No Further Action" order, with conditions, including, but not limited to, the use of institutional or engineering controls where appropriate, when alternative cleanup target levels established pursuant to subparagraph (g)3. have been achieved or when the person responsible for site rehabilitation can demonstrate that the cleanup target level is unachievable with the use of available technologies. Before ~~Prior to~~ issuing such an order, the department shall consider the feasibility of an alternative site rehabilitation technology at the contaminated site.

(i) Establish appropriate cleanup target levels for soils. Although there are existing state water quality standards, there are no existing state soil quality standards. The Legislature does not intend, through the adoption of this section, to create such soil quality standards. The specific rulemaking authority granted pursuant to this section merely authorizes the department to establish appropriate soil cleanup target levels. These soil cleanup target levels shall be applicable at sites only after a determination as to legal responsibility for site rehabilitation has been made pursuant to other provisions of this chapter or chapter 403.

1. In establishing soil cleanup target levels for human exposure to each contaminant found in soils from the land surface to 2 feet below land surface, the department shall apply the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; and

the best achievable detection limit. However, the department may ~~shall~~ not require site rehabilitation to achieve a cleanup target level for an individual contaminant that is more stringent than the site-specific~~, naturally occurring~~ background concentration for that contaminant. Institutional controls or other methods shall be used to prevent human exposure to contaminated soils more than 2 feet below the land surface. Any removal of such institutional controls shall require such contaminated soils to be remediated.

2. Leachability-based soil cleanup target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil cleanup target levels established by the department. The leachability goals are ~~shall~~ not ~~be~~ applicable if the department determines, based upon individual site characteristics, and in conjunction with institutional and engineering controls, if needed, that contaminants will not leach into the groundwater at levels that pose a threat to human health, public safety, and the environment.

3. Using risk-based corrective action principles, the department shall approve alternative cleanup target levels in conjunction with institutional and engineering controls, if needed, based upon an applicant's demonstration, using site-specific or other relevant data and information, risk assessment modeling results, including results from probabilistic risk assessment modeling, risk assessment studies, risk reduction

techniques, or a combination thereof, that human health, public safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2.

The department shall require source removal as a risk reduction measure if warranted and cost-effective. Once source removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. Further, the department shall determine if the reevaluated site qualifies for monitoring only or if no further action is required to rehabilitate the site. If additional site rehabilitation is necessary to reach "No Further Action" status, the department is encouraged to utilize natural attenuation monitoring, including long-term natural attenuation ~~and~~ monitoring, where site conditions warrant.

Section 3. Present subsections (3) through (11) of section 376.79, Florida Statutes, are redesignated as subsections (4) through (12), respectively, and present subsections (12) through (19) are redesignated as subsections (14) to (21), respectively, and new subsections (3) and (13) are added to that section, to read:

376.79 Definitions relating to Brownfields Redevelopment Act.—As used in ss. 376.77-376.85, the term:

(3) "Background concentration" means the concentration of contaminants naturally occurring or resulting from anthropogenic impacts unrelated to the discharge of pollutants or hazardous substances at a contaminated site undergoing site rehabilitation.

(13) "Long-term natural attenuation" means natural

attenuation approved by the department as a site rehabilitation program task for a period of more than 5 years.

Section 4. Section 376.81, Florida Statutes, is amended to read:

376.81 Brownfield site and brownfield areas contamination cleanup criteria.—

(1) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. By July 1, 2001, the secretary of the department shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing the rule, the department shall apply, to the maximum extent feasible, a risk-based corrective action process to achieve protection of human health and safety and the environment in a cost-effective manner based on the principles set forth in this subsection. The rule must prescribe a phased risk-based corrective action process that is iterative and that tailors site rehabilitation tasks to site-specific conditions and risks. The department and the person responsible for brownfield site rehabilitation are encouraged to establish decision points at which risk management decisions will be made. The department shall provide an early decision, when requested, regarding applicable exposure factors and a risk management approach based on the current and future land use at the site. The rule must ~~shall also~~ include protocols for the use of natural attenuation, including long-term natural attenuation where site conditions warrant, the use of

institutional and engineering controls, and the issuance of "no further action" letters. The criteria for determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program must:

(a) Consider the current exposure and potential risk of exposure to humans and the environment, including multiple pathways of exposure. The physical, chemical, and biological characteristics of each contaminant must be considered in order to determine the feasibility of risk-based corrective action assessment.

(b) Establish the point of compliance at the source of the contamination. However, the department may ~~is authorized to~~ temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may ~~also is authorized~~, pursuant to criteria provided for in this section, ~~to~~ temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are protected. When temporarily extending the point of compliance beyond the property boundary, it cannot be extended further than the lateral extent of the plume at the time of execution of the brownfield site rehabilitation agreement, if known, or the lateral extent of the plume as defined at the time of site assessment. Temporary

extension of the point of compliance beyond the property boundary, as provided in this paragraph, must include actual notice by the person responsible for brownfield site rehabilitation to local governments and the owners of any property into which the point of compliance is allowed to extend and constructive notice to residents and business tenants of the property into which the point of compliance is allowed to extend. Persons receiving notice pursuant to this paragraph shall have the opportunity to comment within 30 days of receipt of the notice.

(c) Ensure that the site-specific cleanup goal is that all contaminated brownfield sites and brownfield areas ultimately achieve the applicable cleanup target levels provided in this section. In the circumstances provided below, and after constructive notice and opportunity to comment within 30 days from receipt of the notice to local government, to owners of any property into which the point of compliance is allowed to extend, and to residents on any property into which the point of compliance is allowed to extend, the department may allow concentrations of contaminants to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if human health, public safety, and the environment are protected.

(d) Allow brownfield site and brownfield area rehabilitation programs to include the use of institutional or engineering controls, where appropriate, to eliminate or control the potential exposure to contaminants of humans or the environment. The use of controls must be preapproved by the

department and only after constructive notice and opportunity to comment within 30 days from receipt of notice is provided to local governments, to owners of any property into which the point of compliance is allowed to extend, and to residents on any property into which the point of compliance is allowed to extend. When institutional or engineering controls are implemented to control exposure, the removal of the controls must have prior department approval and must be accompanied by the resumption of active cleanup, or other approved controls, unless cleanup target levels under this section have been achieved.

(e) Consider the interactive ~~additive~~ effects of contaminants, including additive, synergistic, and antagonistic effects. ~~The synergistic and antagonistic effects shall also be considered when the scientific data become available.~~

(f) Take into consideration individual site characteristics, which shall include, but not be limited to, the current and projected use of the affected groundwater and surface water in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

(g) Apply state water quality standards as follows:

1. Cleanup target levels for each contaminant found in groundwater shall be the applicable state water quality standards. Where such standards do not exist, the cleanup target

levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall apply the following, as appropriate, in establishing the applicable cleanup target levels: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; and nuisance, organoleptic, and aesthetic considerations. However, the department may ~~shall~~ not require site rehabilitation to achieve a cleanup target level for any individual contaminant which is more stringent than the site-specific~~, naturally occurring~~ background concentration for that contaminant.

2. Where surface waters are exposed to contaminated groundwater, the cleanup target levels for the contaminants shall be based on the more protective of the groundwater or surface water standards as established by department rule, unless it has been demonstrated that the contaminants do not cause or contribute to the exceedance of applicable surface water quality criteria. In such circumstances, the point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

3. Using risk-based corrective action principles, the department shall approve alternative cleanup target levels in conjunction with institutional and engineering controls, if needed, based upon an applicant's demonstration, using site-specific or other relevant data and information, risk assessment modeling results, including results from probabilistic risk assessment modeling, risk assessment studies, risk reduction techniques, or a combination thereof, that human health, public

safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the standard. In determining whether it is appropriate to establish alternative cleanup target levels at a site, the department must consider the effectiveness of source removal, if any, which has been completed at the site and the practical likelihood of the use of low yield or poor quality groundwater, the use of groundwater near marine surface water bodies, the current and projected use of the affected groundwater in the vicinity of the site, or the use of groundwater in the immediate vicinity of the contaminated area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, provided human health, public safety, and the environment are protected. When using alternative cleanup target levels at a brownfield site, institutional controls shall not be required if:

a. The only cleanup target levels exceeded are the groundwater cleanup target levels derived from nuisance, organoleptic, or aesthetic considerations;

b. Concentrations of all contaminants meet the state water quality standards or minimum criteria, based on protection of human health, provided in subparagraph 1.;

c. All of the groundwater cleanup target levels established pursuant to subparagraph 1. are met at the property boundary;

d. The person responsible for brownfield site rehabilitation has demonstrated that the contaminants will not migrate beyond the property boundary at concentrations exceeding

the groundwater cleanup target levels established pursuant to subparagraph 1.;

e. The property has access to and is using an offsite water supply and no unplugged private wells are used for domestic purposes; and

f. The real property owner provides written acceptance of the "no further action" proposal to the department or the local pollution control program.

(h) Provide for the department to issue a "no further action order," with conditions, including, but not limited to, the use of institutional or engineering controls where appropriate, when alternative cleanup target levels established pursuant to subparagraph (g)3. have been achieved, or when the person responsible for brownfield site rehabilitation can demonstrate that the cleanup target level is unachievable within available technologies. Before ~~Prior to~~ issuing such an order, the department shall consider the feasibility of an alternative site rehabilitation technology at ~~in~~ the brownfield site ~~area~~.

(i) Establish appropriate cleanup target levels for soils.

1. In establishing soil cleanup target levels for human exposure to each contaminant found in soils from the land surface to 2 feet below land surface, the department shall apply the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; and the best achievable detection limit. However, the department may ~~shall~~ not require site rehabilitation to achieve a cleanup target level for an individual contaminant which is more stringent than the site-specific~~, naturally occurring~~ background concentration for that contaminant. Institutional controls or

other methods shall be used to prevent human exposure to contaminated soils more than 2 feet below the land surface. Any removal of such institutional controls shall require such contaminated soils to be remediated.

2. Leachability-based soil cleanup target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil cleanup target levels established by the department. The leachability goals are ~~shall~~ not ~~be~~ applicable if the department determines, based upon individual site characteristics, and in conjunction with institutional and engineering controls, if needed, that contaminants will not leach into the groundwater at levels that pose a threat to human health, public safety, and the environment.

3. Using risk-based corrective action principles, the department shall approve alternative cleanup target levels in conjunction with institutional and engineering controls, if needed, based upon an applicant's demonstration, using site-specific or other relevant data and information, risk assessment modeling results, including results from probabilistic risk assessment modeling, risk assessment studies, risk reduction techniques, or a combination thereof, that human health, public safety, and the environment are protected to the same degree as provided in subparagraphs 1. and 2.

(2) The department shall require source removal, as a risk reduction measure, if warranted and cost-effective. Once source

removal at a site is complete, the department shall reevaluate the site to determine the degree of active cleanup needed to continue. Further, the department shall determine if the reevaluated site qualifies for monitoring only or if no further action is required to rehabilitate the site. If additional site rehabilitation is necessary to reach "no further action" status, the department is encouraged to utilize natural attenuation monitoring, including long-term natural attenuation ~~and~~ monitoring, where site conditions warrant.

(3) The cleanup criteria described in this section govern only site rehabilitation activities occurring at the contaminated site. Removal of contaminated media from a site for offsite relocation or treatment must be in accordance with all applicable federal, state, and local laws and regulations.

Section 5. Subsection (3) of section 196.1995, Florida Statutes, is amended to read:

196.1995 Economic development ad valorem tax exemption.—

(3) The board of county commissioners or the governing authority of the municipality that calls a referendum within its total jurisdiction to determine whether its respective jurisdiction may grant economic development ad valorem tax exemptions may vote to limit the effect of the referendum to authority to grant economic development tax exemptions for new businesses and expansions of existing businesses located in an enterprise zone or a brownfield area, as defined in s. 376.79(5) ~~s. 376.79(4)~~. If an area nominated to be an enterprise zone pursuant to s. 290.0055 has not yet been designated pursuant to s. 290.0065, the board of county commissioners or the governing authority of the municipality may call such referendum prior to

such designation; however, the authority to grant economic development ad valorem tax exemptions does not apply until such area is designated pursuant to s. 290.0065. The ballot question in such referendum shall be in substantially the following form and shall be used in lieu of the ballot question prescribed in subsection (2):

Shall the board of county commissioners of this county (or the governing authority of this municipality, or both) be authorized to grant, pursuant to s. 3, Art. VII of the State Constitution, property tax exemptions for new businesses and expansions of existing businesses that are located in an enterprise zone or a brownfield area and that are expected to create new, full-time jobs in the county (or municipality, or both)?

....Yes—For authority to grant exemptions.

....No—Against authority to grant exemptions.

Section 6. Paragraph (c) of subsection (5) of section 288.1175, Florida Statutes, is amended to read:

288.1175 Agriculture education and promotion facility.—

(5) The Department of Agriculture and Consumer Services shall competitively evaluate applications for funding of an agriculture education and promotion facility. If the number of applicants exceeds three, the Department of Agriculture and Consumer Services shall rank the applications based upon criteria developed by the Department of Agriculture and Consumer Services, with priority given in descending order to the following items:

(c) The location of the facility in a brownfield site as

defined in s. 376.79(4) ~~s. 376.79(3)~~, a rural enterprise zone as defined in s. 290.004, an agriculturally depressed area as defined in s. 570.74, or a county that has lost its agricultural land to environmental restoration projects.

Section 7. This act shall take effect July 1, 2015.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 1352
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Smith
SUBJECT:	Deferred Compensation
DATE:	April 13, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	**Fav/CS**
2.	McSwain	DeLoach	AGG	**Recommend: Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1352 prohibits a county, municipality, political subdivision or constitutional county officer from entering into contracts with investment providers and recordkeepers for local deferred compensation programs from exceeding a five-year term. The bill prohibits specified persons from participating in the selection of an investment provider or recordkeeper under certain circumstances.

The bill further requires the administrator of a local deferred compensation program to comply with certain fiduciary standards. The bill authorizes a public body or official that establishes a local deferred compensation program to organize an oversight committee.

The bill has no impact on state government and an indeterminate impact on local government.

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

II. Present Situation:

Government Employees' Deferred Compensation Act

The Government Employees' Deferred Compensation Act[1] allows the state and local governments[2] to permit an employee to defer a portion of that employee's otherwise payable compensation until a later date.[3] Typically, employees participate in order to supplement their retirement income with an additional income stream that may have realized a variety of tax advantages.[4]

Deferment of federal taxation on funds is allowed up to an annually indexed amount.[5] The maximum amount of salary that can be deferred is set by IRS regulations and is currently the lesser of 80 percent of compensation or $17,500. Participants aged 50 or older may participate in the "50+ Catch-up" provision, which currently allows a maximum annual contribution of $23,000. Making contributions into a deferred compensation account immediately lowers an employee's amount of taxable income during working years. Account earnings are similarly sheltered from federal taxation until a distribution occurs.[6] A participant reports the income and earnings on their federal tax return only upon receiving distributions from the plan.[7]

County, Municipal, and Other Political Subdivision and Constitutional County Officer Deferred Compensation Programs

Counties, municipalities, and other political subdivisions may adopt and establish their own deferred compensation program by ordinance.[8] Constitutional county officers also may establish their own deferred compensation program by contractual agreement or through similar approval documentation.[9] The county, municipality, other political subdivision, or county constitutional officers are responsible for the programs which they establish.

III. Effect of Proposed Changes:

County, Municipal, Political Subdivision or Constitutional County Officer Deferred Compensation Plan

Section 1 amends s. 112.215(5), F.S., to prohibit a county, municipality, political subdivision, or constitutional county officer from entering into a contract with an investment provider or

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[1] Section 112.215(1), F.S.
[2] Including, any state agency, county, municipality, other political subdivision, or constitutional county officer. Section 112.215(3), F.S.
[3] Section 112.215(3), F.S.
[4] Florida Deferred Compensation Website, *FAQ*, https://www.myfloridadeferredcomp.com/SOFWeb/publications/ImportantDocuments/FAQs1.pdf. (last visited March 26, 2015).
[5] Florida Bureau of Deferred Compensation, Deferred Compensation Plan, *available at* https://www.myfloridadeferredcomp.com/SOFWeb/publications/ImportantDocuments/DFS-J3-1176.pdf. (last visited March 26, 2015) (See Section 3.05: Maximum Deferral, at 10).
[6] Florida Deferred Compensation Website, *FAQ*, *supra*.
[7] *Id*.
[8] Section 112.215(5), F.S.
[9] *Id*.

recordkeeper for purposes of offering investment vehicles or products to participants in the deferred compensation program or recordkeeping services for the program that exceeds 5 years.

Before the end of each contract term, the public official or body must initiate a public bid for the procurement of investment providers and recordkeepers.

The bill provides that if the administrator of a deferred compensation program or any other person involved with the selection of an investment provider or recordkeeper has had any direct interest in any contract, privilege, or other benefit granted by the investment provider or recordkeeper in the preceding two years, he or she must abstain from participating in any decision regarding the selection of the investment provider or recordkeeper.

The bill clarifies that establishing a personal account with an investment provider or recordkeeper or taking a distribution from a personal account does not constitute a direct interest.

Additionally, the bill requires that the administrator of a deferred compensation program must comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974, as amended, at 29 U.S.C. s. 1104(a)(1)(A)-(C).

Oversight Committee

Further, the bill provides that a county, municipality, or political subdivision or constitutional county officer that establishes a deferred compensation plan may evaluate the performance of the plan administrator through an oversight committee. The oversight committee is required to provide assistance and recommendations with respect to the administration of the plan, including, but not limited to, investment options offered under the plan. A county, municipality, or political subdivision or constitutional county officer must determine the authority, activities, and composition of the oversight committee.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms (competitively procure services related to deferred compensation plans on a more frequent basis), the provisions of Art. VII, s. 18(a) of the Florida Constitution, may apply. If those constitutional provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

However, based on the limited fiscal impact that is likely be incurred, the bill may be exempt from those provisions based on the anticipated insignificant annual fiscal impact on counties.

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. Counties, municipalities, political subdivisions and constitutional county officers may incur costs in the bid and procurement process for deferred compensation programs and record keeping services every five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.215 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 31, 2015:
The provisions that applied to the State of Florida's deferred compensation plan are deleted.

The requirement that local government procurements for services related to deferred compensation programs be overseen by a professionally qualified independent consultant is deleted.

B. Amendments:

None.

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

585-03191-15 20151352c1

A bill to be entitled

An act relating to deferred compensation; amending s. 112.215, F.S.; prohibiting contracts with investment providers and recordkeepers for local deferred compensation programs from exceeding a 5-year term; requiring a public official or body to initiate a public bid for investment providers and recordkeepers for local deferred compensation programs; prohibiting specified persons from participating in the selection of an investment provider or recordkeeper under certain circumstances; requiring the administrator of a local deferred compensation program to comply with certain fiduciary standards; authorizing a public body or official that establishes a local deferred compensation program to organize an oversight committee; providing an effective date.

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

Section 1. Subsections (5) and (14) of section 112.215, Florida Statutes, are amended to read:

112.215 Government employees; deferred compensation program.—

(5) Any county, municipality, or other political subdivision ~~of the state~~ may by ordinance, and any constitutional county officer under s. 1(d), Art. VIII of the State Constitution ~~of 1968~~ may by contract agreement or other documentation constituting approval, adopt and establish for itself and its employees a deferred compensation program. The

585-03191-15 20151352c1

ordinance shall designate an appropriate official of the county, municipality, or political subdivision to approve and administer a deferred compensation plan or otherwise provide for such approval and administration. The ordinance shall also designate a public official or body to make the determinations provided for in paragraph (6)(b). If a constitutional county officer elects to adopt and establish for that office and its employees a deferred compensation program, the constitutional county officer shall be the appropriate official to make the determinations provided for in this subsection and in paragraph (6)(b).

(a) A county, municipality, political subdivision, or constitutional county officer may not enter into a contract with an investment provider or recordkeeper for purposes of offering investment vehicles or products to participants in the deferred compensation program or recordkeeping services for the program for a term to exceed 5 years. Before the end of each contract term, the public official or body shall initiate a public bid for the procurement of investment providers and recordkeepers.

(b) If the administrator of a deferred compensation program or any other person involved with the selection of an investment provider or recordkeeper has had any direct interest in any contract, privilege, or other benefit granted by the investment provider or recordkeeper in the preceding 2 years, he or she must abstain from participating in any decision regarding the selection of the investment provider or recordkeeper. Establishing a personal account with an investment provider or recordkeeper or taking a distribution from a personal account does not constitute a direct interest for purposes of this

paragraph.

(c) The administrator of a deferred compensation program established pursuant to this subsection shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974, as amended, at 29 U.S.C. s. 1104(a)(1)(A)-(C).

(d) A county, municipality, or political subdivision or constitutional county officer that establishes a deferred compensation plan may evaluate the performance of the plan administrator through an oversight committee. An oversight committee shall provide assistance and recommendations with respect to the administration of the plan, including, but not limited to, investment options offered under the plan. A county, municipality, or political subdivision or constitutional county officer shall determine the authority, activities, and composition of the oversight committee.

(14) This section ~~subsection~~ may not impair an existing contract. In each county that has one or more constitutional county officers, the board of county commissioners and the constitutional county officers shall negotiate a joint deferred compensation program for all their respective employees under s. 163.01. If all parties to the negotiation cannot agree upon a joint deferred compensation program, the provisions of subsection (5) apply.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14-15 1352
Meeting Date

1352
Bill Number (if applicable)

Topic Deferred Comp.

Amendment Barcode (if applicable)

Name Chris Doolin

Job Title Consultant

Address 1118 B Thomasville Rd
Street

Phone cdoolin@nettally.com

Tallahassee Fla 32302
City State Zip

Email 850-508-5492

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Small County Coalition

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 31, 2015

I respectfully request that **Senate Bill #1352**, relating to Deferred Compensation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Christopher L. Smith
Florida Senate, District 31

SENATE APPROPRIATIONS
RECEIVED
15 APR -1 AM 10: 40
STAFF DIR. _____ STAFF

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/SB 1468 (232520)
INTRODUCER:	Appropriations Subcommittee on General Government and Senator Richter
SUBJECT:	Regulation of Oil and Gas Resources
DATE:	April 16, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Favorable**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1468 amends provisions relating to the regulation of oil and gas resources. Specifically, the bill:

- Provides a definition for "high pressure well stimulation";
- Requires the Department of Environmental Protection (DEP) to adopt rules for the regulation of high pressure well stimulation;
- Specifies the rules must ensure all well drilling activities are done properly;
- Requires high pressure well stimulation to be monitored, inspected, and included in drilling reports;
- Requires notice be given to the DEP and a fee be paid prior to high pressure well stimulation activities;
- Prohibits high pressure well stimulation prior to permit issuance;
- Requires the DEP to consider groundwater contamination and public policy when reviewing a permit application for high pressure well stimulation;
- Specifies that a permit may be denied or specific permitting conditions applied based on the compliance history of the permit applicant or affiliated entity;
- Specifies the DEP has clear authority to inspect drilling activities;
- Requires the permit applicant to provide financial assurance to the DEP that high pressure well stimulation will be conducted in a safe and environmentally compatible manner;
- Increases the civil penalty from $10,000 per day to $25,000 per day for violations of the provisions found in Part I of ch. 377, F.S.

- Requires the DEP to conduct a study on high pressure well stimulations;
- Prohibits the DEP from issuing a permit for high pressure well stimulation until the study is complete and rules have been adopted to implement the findings of the study;
- Creates a high pressure well stimulation chemical disclosure registry and provides specific requirements for the registry;
- Requires the chemical ingredients used in high pressure well stimulation to be reported to the chemical disclosure registry, FracFocus; and
- Exempts information considered proprietary business information as defined in s. 377.24075(1)(a)-(e), F.S., from the disclosure registry.

The Department of Environmental Protection (DEP) estimates the cost for the study required in the bill will cost $3 million. The remaining fiscal impact of the bill is indeterminate. According to the DEP, the increased workload related to the regulatory and rulemaking process can be handled within existing resources.

The bill is effective July 1, 2015.

II. Present Situation:

Oil was first successfully extracted from the ground in large quantities in 1859 in Titusville, Pennsylvania. Prior to this, oil was collected through seeps in small quantities and skimmed from surface waters using blankets.[1] Since this time, the oil and gas industry has evolved to become one of the world's largest industries.[2]

Traditional Drilling and Hydraulic Fracturing

Traditional oil wells are drilled vertically to reach the oil and gas reservoir. A steel pipe, called a casing, is inserted into the wellbore and set in place using cement. Once the targeted area is reached, the well casing is perforated and the oil and gas immediately surrounding the well can be extracted.[3]

Hydraulic fracturing is a technique that involves stimulating the well to extract oil and gas. Large amounts of fluid under pressure are injected into a wellbore to create and extend fractures in the rock formation. The fractures are held open by a slurry mixture which allows natural gas to flow from the fractures into the production well.[4]

The injected fluid is composed of water, proppants, and chemical additives. The composition of the injected fluid varies between rock formations but the majority of the fluid, 98 to 99.5 percent, is water. The proppants are made of sand, ceramic pellets, or other small incompressible particles

[1] Business Reference Services, *History of Oil and Gas*, http://www.loc.gov/rr/business/BERA/issue5/history.html (last visited Mar. 29, 2015).
[2] American Petroleum Institute, *Industry Economics*, http://www.api.org/oil-and-natural-gas-overview/industry-economics (last visited Mar. 29, 2015).
[3] Drilling Waste Management Information System, *Fact Sheet-Drilling Practices That Minimize Generation of Drilling Wastes*, http://web.ead.anl.gov/dwm/techdesc/drilling/ (last visited Mar. 29, 2015).
[4] FracFocus Chemical Disclosure Registry, *Hydraulic Fracturing: The Process*, http://fracfocus.org/hydraulic-fracturing-how-it-works/hydraulic-fracturing-process. (last visited Mar. 27, 2013).

that hold the fractures open. The chemical additives include bactericides, buffers, stabilizers, fluid-loss additives, and surfactants that improve the effectiveness of the fracturing process and prevent damage to the rock formation.[5]

The injection of the fracturing fluid is sequenced and the blend and proportions of the additives used vary depending on the characteristics of the rock formation. The acid stage consists of several thousand gallons of water mixed with hydrochloric acid or muriatic acid that work to clear cement debris and create an open path for the fracturing fluids. The pad stage consists of approximately 100,000 gallons of "slick-water," which is a friction reducing agent that reduces the pressure needed to pump fluid into the wellbore and facilitate the flow and placement of the proppant material. The prop sequence stage, which may include several sub-stages, uses several hundred thousand gallons of water mixed with varying sized particulates that keep the fractures open. Finally, there is a flushing stage that consists of enough water to adequately flush the excess proppant from the wellbore.[6]

Oil and Gas Production in Florida

There are two major oil producing areas in Florida: the Sunniland trend in South Florida and the western panhandle. The Sunniland trend is approximately 200 to 300 feet thick and the top of the formation is approximately 11,200 to 11,600 feet below sea level. This area has been in production since 1943. Oil production in north Florida began with the discovery of the Jay field in 1970, which is the largest oil field in the state. There are eight oil fields in this region that extend through Escambia and Santa Rosa Counties. The production area is 14,500 to 16,800 feet below the land surface and between 5 to 259 feet thick.[7] Production from both regions peaked at 100,000 barrels per day in 1978 and has since leveled off to approximately 6,000 barrels per day.[8]

Oil and Gas Regulation in Florida

The Oil and Gas program in the Department of Environmental Protection (DEP) is the permitting authority for oil and gas wells under Part I of ch. 377.01, F.S. Section 377.22, F.S., directs the DEP to establish rules for the oil and gas program that ensure human health, public safety, and the environment are protected from the exploration phase to well completion and abandonment phase. The DEP is also responsible for monitoring and reporting the well drilling and production activities from exploration to well abandonment.

The DEP adopted Rules 62C-25 through 30, Florida Administrative Code (F.A.C.), to implement Part I of ch. 377, F.S. The rules include permitting procedures, bonding requirements, well spacing, well construction, production, injection, workovers, and well abandonment. The rule

[5] *Id*.
[6] *Id*.
[7] Bureau of Land Management, *Florida, Reasonable Forseeable Development Scenario for Fluid Minerals*, 18 (Apr. 2008), *available at* http://www.blm.gov/style/medialib/blm/es/jackson_field_office/planning/planning_pdf_florida.Par.65103.File.dat/Florida_RFDS_R1.pdf (last visited Mar. 29, 2015).
[8] EIA, Florida State Energy Profile, Florida Quick Facts, http://www.eia.gov/state/print.cfm?sid=FL (last visited Mar. 29, 2015).

also requires each operator to submit a spill prevention and cleanup plan pursuant to Rule 62C-28.004(2), F.A.C. The plan must include the potential spill source, the protective measures to prevent a spill, and the location of emergency equipment in the event of a spill.

The requirements and procedures for well stimulation technology is not provided for in rule or statute; however, hydraulic fracturing, acidizing, or other chemical treatments of a well are activities that may be approved in a workover. A workover includes a variety of remedial operations that are conducted in order to increase well production. Rule 62C-25.002(61), F.A.C., defines a "work over" as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates." An operator is required to notify the DEP prior to commencing a workover procedure, unless it is for an emergency operation in which case the operator must notify the DEP during the operation or immediately thereafter.[9] The operator must submit a revised Well Record to the DEP within 30 days of the workover.[10]

Emergency Planning and Community Right to Know Act

In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA), which requires federal, local, and state governments to report hazardous and toxic chemicals in order to increase the public's knowledge and access to information on chemicals at individual facilities. The EPCRA includes the Toxic Release Inventory (TRI), which is a publicly available database that contains information on chemical releases and waste management reported by certain industries. The U.S. Environmental Protection Agency (EPA) has not included oil and gas extraction as an industry that must report under the TRI because the EPA determined the oil and gas extraction industry is not a high priority for reporting. The decision is based on the fact that most of the information that the TRI requires is already reported by oil and gas providers to the individual state agencies and reporting for the hundreds and thousands of oil and gas sites would overwhelm the system.[11]

In May 2012, the Bureau of Land Management (BLM) published a proposed rule that would require companies that conduct hydraulic fracturing on lands managed by the BLM to disclose the composition of the fracturing fluid. Congress has also proposed legislation requiring the disclosure of chemicals under the Fracturing Responsibility and Awareness of Chemicals Act.[12]

To date, federal legislation has not been implemented to require the disclosure of chemicals used in hydraulic fracturing; therefore, many states have taken steps to develop their own chemical disclosure laws. The disclosure requirements that have been established in certain states include the information about the chemical additives and whether the disclosures are made to state agencies or available to the public, the composition of the chemicals, the protections provided in

[9] Fla. Admin. Code R. 62C-29.006 (1996).
[10] The Well Record is the DEP Oil and Gas Form 8.
[11] *Id*.
[12] *Id*.

trade secrets, and when the disclosure of the chemicals is to take place in relation to the fracturing process.[13]

FracFocus Chemical Disclosure Registry

FracFocus is a national hydraulic fracturing chemical registry operated by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. The registry provides public access to reported chemicals used for hydraulic fracturing. FracFocus does not replace state governmental information systems but is used by ten states as the primary means of state chemical disclosure. Currently, there are 41,118 well sites registered with the database.[14]

Public Records Law

Article I, s. 24(a) of the Florida Constitution sets the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may provide for the exemption of records from the requirements of the constitution; however, the Legislature must specify the public necessity to justify the exemption.

Access to public records is also addressed in the Open Government Sunset Review Act in s. 119.07(1), F.S., which guarantees every person the right to inspect and copy any state, county or municipal record. The Open Government Sunset Review Act provides that a public record or public meeting exemption may only be created or maintained if it serves a public purpose. The Legislature created a number of specific exemptions from the Open Government Sunset Review Act, including documents submitted by a private party that constitute trade secrets as defined in s. 812.081, F.S. and are stamped as confidential at the time of submission to an agency.

Proprietary Business Information

Section 377.24075, F.S., defines "proprietary business information," as information that:

- Is owned or controlled by the applicant or person affiliated with the applicant;
- Is intended to be private and is treated by the applicant as private;
- Has not been disclosed except as required by law or private agreement;
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as requested by the DEP;
- Includes trade secrets as defined in s. 688.002, F.S.;
- Includes leasing plans, real property acquisition plans, exploration budgets, or marketing studies; and
- Includes well design, completion plans, geologic and engineering studies, utilization strategies or operating plans.

[13] Congressional Research Service, *Hydraulic Fracturing: Chemical Disclosure Requirements*, 2 (June 19, 2012), *available at* http://www.fas.org/sgp/crs/misc/R42461.pdf (last visited Mar. 29, 2015).
[14] *Supra* note 2.

III. Effect of Proposed Changes:

Section 1 amends s. 377.19, F.S., to define "high pressure well stimulation" as "a well intervention performed by injecting more than 100,000 gallons of fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving flow of hydrocarbons from the formation into the wellbore."

Section 2 amends s. 377.22, F.S., to require the Department of Environmental Protection (DEP) to adopt rules for the regulation of high pressure well stimulation. The bill requires the permit applicant to provide a reasonable bond or other form of security acceptable to the DEP, which is conditioned on each well being properly drilled, cased, produced, operated, and plugged. It also includes high pressure well stimulation as an activity that is monitored and inspected.

The bill requires high pressure well stimulation to be to be included in drilling reports and the disclosure of chemicals and other materials used to stimulate the well to be reported to the chemical disclosure registry FracFocus. The bill exempts information considered proprietary business information as defined in s. 377.24075(1)(a)-(e), F.S., from the disclosure registry.

The bill requires the DEP to consider the past history of violations on the part of the permit applicant and the applicant's affiliated entities in all permit reviews.

Section 3 amends s. 377.24, F.S., to require notice be given to the DEP and a fee be paid prior to high pressure well stimulation activities. The amount of fee will be determined through the rulemaking process. The bill also prohibits high pressure well stimulation prior to permit issuance.

Section 4 amends s. 377.241, F.S., to add criteria for issuing a permit for high pressure well stimulation. The DEP must consider whether the high pressure well stimulation is designed to ensure the groundwater through which the well is drilled is not contaminated and the high pressure well stimulation is consistent with the public policy stated in s. 377.06, F.S.

The bill specifies that a permit may be denied or require specific conditions of a permit, including increased bonding and monitoring, if the permit applicant or affiliated entity has a history of violations related to the regulation of oil and gas, including violations that occurred outside of Florida.

Section 5 amends s. 377.242, F.S., to specify that the DEP has the authority to inspect drilling activities, including installation and cementing of casing, testing of blowout preventers, pressure testing of casing and casing shoe, and testing of cement plug integrity during plugging and abandoning operations.

Section 6 amends s. 377.245, F.S., to require the permit applicant to provide surety to the DEP that high pressure well stimulation will be conducted in a safe and environmentally compatible manner. The bill specifies that the permit applicant must provide such surety consistent with existing law.

Section 7 creates s. 377.2436, F.S., to require the DEP to conduct a study on high pressure well stimulation. The study must include:

- An evaluation of the geologic features in the counties where oil wells have been permitted;
- An analysis of the potential impact of high pressure well stimulation and wellbore construction on the geologic features;
- An evaluation of the potential hazards and risks that high pressure well stimulation may pose to surface water and groundwater resources;
- An assessment of the potential impact to drinking water resources that:
  - Identifies the main factors affecting the severity and frequency of impacts; and
  - Analyzes the potential for the use or reuse of recycled water in high pressure well stimulation fluids while meeting water quality standards;
- A review and evaluation of the potential for high pressure well stimulation to cause groundwater contamination under or near wells that have been abandoned and plugged;
- An identification of a setback radius from plugged and abandoned wells that could be impacted by high pressure well stimulation;
- Review and evaluate the disposition of high pressure well stimulation after the high pressure well stimulation process;
- An analysis of the risks associated with handling, treatment, and disposal of flowback fluids and any other material generated by the treatment;
- A review and evaluation of all known and potential environmental impacts of high pressure well stimulation treatments including:
  - Harmful atmospheric emissions;
  - Greenhouse gas emissions;
  - Degradation of air quality;
  - Impacts to wildlife, native plants, and habitat;
  - Habitat fragmentation;
  - Groundwater and surface water contamination;
  - Noise pollution;
  - Fire and explosions; and
  - Induced seismicity.

The bill specifies that the study is subject to an independent scientific peer review, and the findings of the study must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2016. It also requires the results of the study to be posted to the DEP's website.

The bill requires the DEP to adopt rules to implement the findings of the study if the study determines rules are warranted and additional legislation is not required. The DEP is required to provide recommendations for legislation to the Legislature if the DEP determines that additional legislation is needed to protect surface water and groundwater.

The bill prohibits the DEP from issuing a permit for high pressure well stimulation until the study is submitted, all rulemaking is complete, or additional legislation is enacted to protect human health, safety, and the environment.

Section 8 amends s. 377.37, F.S., to increase the civil penalty from $10,000 per offense to $25,000 per offense.

Section 9 creates s. 377.45, F.S., to establish a high pressure well stimulation chemical disclosure registry. The bill requires the DEP to designate the national chemical registry, FracFocus, as the state's registry for chemical disclosure for all wells on which high pressure well stimulation is performed. A link to the FracFocus registry must be provided on the DEP's website. The service provider, vendor, well owner, or operator must report the following minimum information:

- The owner's or operator's name;
- The date of completion of the high pressure well stimulation;
- The county in which the well is located;
- The American Petroleum Institute (API) number for the well;
- The well name and number;
- The latitude and longitude of the wellhead;
- The total vertical depth of the well;
- The total volume of water used in the high pressure well stimulation; and
- Each chemical ingredient that is subject to the Occupational Safety and Health Administration (OSHA) regulations in 29 C.F.R. s. 1910.1200(g)(2) for each well that high pressure well stimulation is performed.[15]

In the event the chemical disclosure registry cannot accept or provide the information to the public, the service provider, vendor, well owner or operator must provide the required information to the DEP.

The service provider, vendor, well owner, or operator is required to report the chemical disclosure information within 60 days of the initiation of high pressure well stimulation. The service provider, vendor, well owner, or operator must also update the chemical disclosure registry and notify the DEP if any chemical ingredient not previously reported is used intentionally.

The bill exempts ingredients from the chemical disclosure registry if the ingredients are unintentionally added to the high pressure well stimulation, occur incidentally or are otherwise unintentionally present in the high pressure well stimulation, or are considered proprietary business information as defined in s. 377.24075(1)(a)-(e), F.S.

Section 10 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[15] See U.S. Department of Labor, *OSHA, Standards-29CFR,* https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=10099 (last visited Mar. 29, 2015).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes a new permit fee for high pressure well stimulations and increases fines from $10,000 per offense per day to $25,000 per offense per day.

B. Private Sector Impact:

The bill increases penalties from $10,000 to $25,000 per offense, which will have a negative fiscal impact on private companies that are found in violation of the law.

The bill protects proprietary business information which may provide a financial benefit to private companies engaged in high pressure well stimulation.

C. Government Sector Impact:

The Department of Environmental Protection (DEP) will incur additional costs associated with permitting high pressure well stimulation activities. The regulatory costs and permit fee(s) will be based on the permitting requirements that will be established through the rulemaking process. According to the DEP, existing staff is sufficient to handle the anticipated workload increases.

The bill increases the penalty for violations from $10,000 per offense to $25,000 per offense. Should violations occur, the increased revenue will have a positive fiscal impact to the Minerals Protection Trust Fund within the DEP.

The costs associated to amend Rules 62C-25 through 30, F.A.C., can be absorbed within the DEP's existing budget.

According to the DEP, the estimated cost for the study on high pressure well stimulations is $3 million.

VI. Technical Deficiencies:

In line 30 of the bill, the word "treatment" should be added to clarify that the study is to examine the disposition of high pressure well stimulation treatments after they have been used.

VII. Related Issues:

The bill defines a "high pressure well stimulation" as "a well intervention performed by injecting more than 100,000 gallons of fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving flow of hydrocarbons from the formation wellbore." The definition limits the high pressure well stimulation activities regulated by the bill to 100,000 gallons. This limit may not capture all well stimulation activities, as the DEP has received at least one workover notice for an interval of well stimulation that was less than 100,000 gallons of fluids.[16] In addition, the amount of pressure applied to a well during stimulation activities varies, therefore, the use of "high pressure" is not clear as it may not be inclusive of the range of pressures that are used during well stimulation activities.[17]

The definition of "proprietary business information" in s. 377.24075(1) (a)-(e), F.S., relates to an application for a natural gas storage facility permit. The definition may not apply to proprietary business information with respect to high pressure well stimulation.

The bill requires the DEP to conduct a study of the effects of high pressure well stimulation and prohibits the DEP from issuing a permit for high pressure well stimulation if the study determines rules are warranted. It is not clear if the rules in this section are just the rules related to the study, or the rulemaking that is required by the bill.

The term "flow back fluid" is referred to in the bill, however, this term has not been defined.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 377.19, 377.22, 377.24, 377.241, 377.242, 377.2425, and 377.37.

The bill creates section 377.45 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on General Government on April 14, 2015:
The committee substitute requires the DEP to conduct a study of the effects of high pressure well stimulation. The bill requires the DEP to submit the findings of the study to the Governor, President of the Senate, and the Speaker of the House of Representatives by March 1, 2016. It also requires the DEP to adopt rules to implement the findings of the study if the study determines rules are warranted or make recommendations to the Legislature for additional legislation. The bill prohibits the DEP from issuing a permit for

[16] Dan A. Hughes, Co., *Collier-Hogan #20-3H, Well Proposal*, 6 (Dec. 23, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).
[17] ALL Consulting, *Expert Evaluation of the D.A. Hughes Collier-Hogan 20-3H, Well Drilling and Workover*, 27 (Dec. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

high pressure well stimulation prior to the adoption of such rules or additional legislation is enacted.

B. Amendments:

None.

819680

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Dean) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 42 - 51

and insert:

(5) "Flowback fluid" means a water-based solution that flows back to the surface during or after completion of well stimulation.

(6)~~(5)~~ "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (17)~~(15)~~.

819680

(7) "High pressure well stimulation" means a well intervention performed by injecting fluids into a rock formation at a pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving flow of hydrocarbons from the formation into the wellbore. The term does not include routine well cleaning or maintenance that does not affect the integrity of the well or rock formation.

====== 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 35 - 39

and insert:

Section 1. Present subsection (5) of section 377.19, Florida Statutes, is amended and redesignated as subsection (6), present subsections (6) through (32) of that section are redesignated as subsections (8) through (34), respectively, and new subsections (5) and (7) are added to that section, to read:

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

Delete line 6

and insert:

the terms "flowback fluid" and "high pressure well stimulation;" amending s.

303748

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Braynon) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 193 and 194
insert:

(10) The department shall impose a $100,000 fine for each offense when a person performs a high pressure well stimulation in violation of this section. Each day during any portion of which such violation occurs constitutes a separate offense.

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

303748

And the directory clause is amended as follows:

Delete line 166

and insert:

Florida Statutes, are amended, and subsection (10) is added to that section to read:

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

And the title is amended as follows:

Delete line 14

and insert:

multiple activities; providing a fine; amending s. 377.241, F.S.;

335094

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Dean) recommended the following:

Senate Amendment (with title amendment)

Between lines 358 and 359
insert:

Section 7. Section 377.2436, Florida Statutes, is created to read:

377.2436 Study on high pressure well stimulations.—

(1) The department shall conduct a study on high pressure well stimulations. The study shall:

(a) Evaluate the underlying geologic features present in

335094

the counties where oil wells have been permitted and analyze the potential impact that high pressure well stimulation and wellbore construction may have on the underlying geologic features.

(b) Evaluate the potential hazards and risks that high pressure well stimulation poses to surface water and groundwater resources. The study shall assess the potential impacts of high pressure well stimulation on drinking water resources and identify the main factors affecting the severity and frequency of impacts and shall analyze the potential for the use or reuse of recycled water in high pressure well stimulation fluids while meeting appropriate water quality standards.

(c) Review and evaluate the potential for groundwater contamination from conducting high pressure well stimulation under or near wells that have been previously abandoned and plugged and identify a setback radius from previously plugged and abandoned wells that could be impacted by high pressure well stimulation.

(d) Review and evaluate the ultimate disposition of high pressure well stimulation after use in high pressure well stimulation processes.

(e) Analyze the risks associated with the handling, treatment, and disposal of flowback fluids and other materials, if any, generated by the treatment.

(f) Review and evaluate all known and potential environmental impacts resulting from high pressure well stimulation treatments, including harmful atmospheric emissions, greenhouse gas emissions, the degradation of air quality, impacts to wildlife, native plants, and habitat, habitat

335094

fragmentation, groundwater and surface water contamination, noise pollution, fire and explosions, and induced seismicity.

(2) The study is subject to independent scientific peer review, and the findings of the study shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2016, and shall be prominently posted on the department website.

(3) The department shall adopt rules to implement the findings of the study if such rules are warranted by the study and the department determines that additional legislation is not needed. If the department determines legislation is needed to protect surface water and groundwater resources, the department shall provide recommendations for such legislation to the Legislature.

(4) The department may not approve any permit to authorize high pressure well stimulations until the study required under this section is submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives and all rulemaking is complete, or additional legislation is enacted to protect human health, safety, and the environment.

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

And the title is amended as follows:

Delete line 24

and insert:

and environmentally compatible manner; creating s. 377.2436, F.S.; requiring a study on high pressure well stimulations; requiring the study to be submitted to the Governor and the Legislature by a specified

335094

date; requiring the findings of the study to be posted on the department website; requiring the department to adopt rules under certain circumstances; requiring the department to provide recommendations for legislation under certain circumstances; prohibiting the approval of permits for high pressure well stimulations until the study has been submitted and all necessary rulemaking is complete or additional legislation is enacted; amending s.

632374

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Braynon) recommended the following:

Senate Amendment

Delete lines 434 - 435
and insert:
(c) Is considered a trade secret, as defined in s. 812.081(1)(c).

Upon request, a service provider, vendor, or well owner or operator must disclose chemicals otherwise exempt under this subsection to emergency personnel.

559428

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Braynon) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 193 and 194
insert:

(10) The department shall impose a $100,000 fine for each offense when a person performs a high pressure well stimulation in violation of this section. Each day during any portion of which such violation occurs constitutes a separate offense.

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

559428

And the directory clause is amended as follows:

Delete line 166

and insert:

Florida Statutes, are amended, and subsection (10) is added to that section to read:

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

And the title is amended as follows:

Delete line 14

and insert:

multiple activities; providing a fine; amending s. 377.241, F.S.;

195516

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Braynon) recommended the following:

Senate Amendment

Delete lines 434 - 435
and insert:
(c) Is considered a trade secret, as defined in s. 812.081(1)(c).

Upon request, a service provider, vendor, or well owner or operator must disclose chemicals otherwise exempt under this subsection to emergency personnel.

By Senator Richter

23-00633C-15 20151468__

A bill to be entitled

An act relating to the regulation of oil and gas resources; amending s. 377.19, F.S.; applying the definitions of certain terms to additional sections of ch. 377, F.S.; conforming a cross-reference; defining the term "high pressure well stimulation"; amending s. 377.22, F.S.; revising the rulemaking authority of the Department of Environmental Protection; providing that certain information may be considered proprietary business information; amending s. 377.24, F.S.; requiring that a permit be obtained before the performance of any high pressure well stimulation; specifying that a permit may authorize single or multiple activities; amending s. 377.241, F.S.; requiring the Division of Resource Management to give consideration to and be guided by certain additional criteria when issuing permits; amending s. 377.242, F.S.; authorizing the department to issue permits for the performance of high pressure well stimulation; clarifying provisions relating to division inspection; amending s. 377.2425, F.S.; requiring an applicant or operator to provide surety that performance of a high pressure well stimulation will be conducted in a safe and environmentally compatible manner; amending s. 377.37, F.S.; increasing the maximum amount for civil penalties; creating s. 377.45, F.S.; requiring the department to designate the national chemical registry as the state's registry; requiring service providers, vendors, or well owners or operators to report certain

23-00633C-15 20151468__

information to the registry; providing applicability; providing an effective date.

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

Section 1. Subsection (5) of section 377.19, Florida Statutes, is amended, present subsections (6) through (32) of that section are redesignated as subsections (7) through (33), respectively, and a new subsection (6) is added to that section, to read:

377.19 Definitions.—As used in ss. 377.06, 377.07, and 377.10-377.45 ~~377.10-377.40~~, the term:

(5) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (16) ~~(15)~~.

(6) "High pressure well stimulation" means a well intervention performed by injecting more than 100,000 gallons of fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving flow of hydrocarbons from the formation into the wellbore.

Section 2. Subsection (2) of section 377.22, Florida Statutes, is amended to read:

377.22 Rules and orders.—

(2) The department shall issue orders and adopt rules pursuant to ss. 120.536 and 120.54 to implement and enforce the provisions of this chapter. Such rules and orders shall ensure that all precautions are taken to prevent the spillage of oil or

any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, including high pressure well stimulations, or during the injection of gas into and recovery of gas from a natural gas storage reservoir. The department shall revise such rules from time to time as necessary for the proper administration and enforcement of this chapter. Rules adopted and orders issued in accordance with this section are for, but not limited to, the following purposes:

(a) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state and to protect the integrity of natural gas storage reservoirs.

(b) To prevent the alteration of the sheet flow of water in any area.

(c) To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations.

(d) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another.

(e) To prevent the intrusion of water into an oil or gas stratum from a separate stratum, except as provided by rules of the division relating to the injection of water for proper reservoir conservation and brine disposal.

(f) To require a reasonable bond, or other form of security acceptable to the department, conditioned upon properly drilling, casing, producing, and operating each well, and

properly plugging ~~the performance of the duty to plug properly~~ each dry and abandoned well, and the full and complete restoration by the applicant of the area over which geophysical exploration, drilling, or production is conducted to the similar contour and general condition in existence prior to such operation.

(g) To require and carry out a reasonable program of monitoring and inspecting ~~or inspection of~~ all drilling operations, high pressure well stimulations, producing wells, ~~or~~ injecting wells, and well sites, including regular inspections by division personnel.

(h) To require the making of reports showing the location of all oil and gas wells; the making and filing of logs; the taking and filing of directional surveys; the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells; if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology; and the making of reports with respect to drilling, ~~and~~ production, and high pressure well stimulations; and the disclosure of chemicals and other materials added during high pressure well stimulations to the chemical disclosure registry, known as FracFocus ~~records~~. However, such information, or any part thereof, at the request of the operator:~~,~~

1. Shall be exempt from ~~the provisions of~~ s. 119.07(1) and held confidential by the division for a period of 1 year after the completion of a well; or

2. May be considered proprietary business information, as defined in s. 377.24075(1)(a)-(e).

(i) To prevent wells from being drilled, operated, or

produced in such a manner as to cause injury to neighboring leases, property, or natural gas storage reservoirs.

(j) To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(k) To require the operation of wells with efficient gas-oil ratio, and to fix such ratios.

(l) To prevent "blowouts," "caving," and "seepage," in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(m) To prevent fires.

(n) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and storage and transportation equipment and facilities.

(o) To regulate the "shooting," perforating, ~~and~~ chemical treatment, and high pressure well stimulations of wells.

(p) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.

(q) To regulate gas cycling operations.

(r) To regulate the storage and recovery of gas injected into natural gas storage facilities.

(s) If necessary for the prevention of waste, as herein defined, to determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state.

(t) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with

the transportation or delivery of oil or gas, or any product.

(u) To regulate the spacing of wells and to establish drilling units.

(v) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage.

(w) To require that geophysical operations requiring a permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas.

(x) To regulate aboveground crude oil storage tanks in a manner which will protect the water resources of the state.

(y) To act in a receivership capacity for fractional mineral interests for which the owners are unknown or unlocated and to administratively designate the operator as the lessee.

(z) To evaluate the history of past adjudicated violations of any substantive and material rule or statute pertaining to the regulation of oil and gas of permit applicants and the applicants' affiliated entities.

Section 3. Subsections (1), (2), and (4) of section 377.24, Florida Statutes, are amended to read:

377.24 Notice of intention to drill well; permits; abandoned wells and dry holes.—

(1) Before drilling a well in search of oil or gas, before performing a high pressure well stimulation, or before storing gas in or recovering gas from a natural gas storage reservoir, the person who desires to drill for, store, or recover gas, ~~or~~ drill for oil or gas, or perform a high pressure well stimulation shall notify the division upon such form as it may

prescribe and shall pay a reasonable fee set by rule of the department not to exceed the actual cost of processing and inspecting for each well or reservoir. The drilling of any well, the performance of any high pressure well stimulation, and the storing and recovering of gas are prohibited until such notice is given, the fee is paid, and a ~~the~~ permit is granted. A permit may authorize a single activity or multiple activities.

(2) An application for the drilling of a well in search of oil or gas, for the performance of a high pressure well stimulation, or for the storing of gas in and recovering of gas from a natural gas storage reservoir~~,~~ in this state must include the address of the residence of the applicant, or applicants, which must be the address of each person involved in accordance with the records of the Division of Resource Management until such address is changed on the records of the division after written request.

(4) Application for permission to drill or abandon any well or perform a high pressure well stimulation may be denied by the division for only just and lawful cause.

Section 4. Subsections (5) and (6) are added to section 377.241, Florida Statutes, to read:

377.241 Criteria for issuance of permits.—The division, in the exercise of its authority to issue permits as hereinafter provided, shall give consideration to and be guided by the following criteria:

(5) For high pressure well stimulations, whether the high pressure well stimulation as proposed is designed to ensure that:

(a) The groundwater through which the well will be or has

been drilled is not contaminated by the high pressure well stimulation; and

(b) The high pressure well stimulation is consistent with the public policy of this state as specified in s. 377.06.

(6) As a basis for permit denial or imposition of specific permit conditions, including increased bonding and monitoring, the history of adjudicated violations of any substantive and material rule or statute pertaining to the regulation of oil or gas, including violations that occurred outside the state, committed by the applicant or an affiliated entity of the applicant.

Section 5. Section 377.242, Florida Statutes, is amended to read:

377.242 Permits for drilling or exploring and extracting through well holes or by other means.—The department is vested with the power and authority:

(1)(a) To issue permits for the drilling for, exploring for, performing a high pressure well stimulation, or production of, oil, gas, or other petroleum products that ~~which~~ are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.

1. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed on any submerged land within any bay or estuary.

2. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed within 1 mile seaward of the coastline

of the state.

3. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed within 1 mile of the seaward boundary of any state, local, or federal park or aquatic or wildlife preserve or on the surface of a freshwater lake, river, or stream.

4. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed within 1 mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream unless the department is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.

5. Without exception, after July 1, 1989, no structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed south of 26°00′00″ north latitude off Florida's west coast and south of 27°00′00″ north latitude off Florida's east coast, within the boundaries of Florida's territorial seas as defined in 43 U.S.C. s. 1301. After July 31, 1990, no structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed north of 26°00′00″ north latitude off Florida's west coast to the western boundary of the state bordering Alabama as set forth in s. 1, Art. II of the State Constitution, or located north of 27°00′00″ north latitude off Florida's east coast to the northern boundary of the state bordering Georgia as set forth in s. 1, Art. II of the

State Constitution, within the boundaries of Florida's territorial seas as defined in 43 U.S.C. s. 1301.

(b) Subparagraphs (a)1. and 4. do not apply to permitting or construction of structures intended for the drilling for, or production of, oil, gas, or other petroleum products pursuant to an oil, gas, or mineral lease of such lands by the state under which lease any valid drilling permits are in effect on the effective date of this act. In the event that such permits contain conditions or stipulations, such conditions and stipulations shall govern and supersede subparagraphs (a)1. and 4.

(c) The prohibitions of subparagraphs (a)1.-4. in this subsection do not include "infield gathering lines," provided no other placement is reasonably available and all other required permits have been obtained.

(2) To issue permits to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole.

(3) To issue permits to establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.

Each permit shall contain an agreement by the permitholder that the permitholder will not prevent inspection by division personnel at any time, including during installation and cementing of casing, testing of blowout preventers, pressure testing of casing and casing shoe, and testing of cement plug integrity during plugging and abandoning operations. The provisions of this section prohibiting permits for drilling or

exploring for oil in coastal waters do not apply to any leases entered into before June 7, 1991.

Section 6. Subsection (1) of section 377.2425, Florida Statutes, is amended to read:

377.2425 Manner of providing security for geophysical exploration, drilling, and production.—

(1) Before ~~Prior to~~ granting a permit to conduct geophysical operations; drilling of exploratory, injection, or production wells; producing oil and gas from a wellhead; performing a high pressure well stimulation; or transporting oil and gas through a field-gathering system, the department shall require the applicant or operator to provide surety that these operations will be conducted in a safe and environmentally compatible manner.

(a) The applicant for a drilling, production, high pressure well stimulation, or injection well permit or a geophysical permit may provide the following types of surety to the department for this purpose:

1. A deposit of cash or other securities made payable to the Minerals Trust Fund. Such cash or securities so deposited shall be held at interest by the Chief Financial Officer to satisfy safety and environmental performance provisions of this chapter. The interest shall be credited to the Minerals Trust Fund. Such cash or other securities shall be released by the Chief Financial Officer upon request of the applicant and certification by the department that all safety and environmental performance provisions established by the department for permitted activities have been fulfilled.

2. A bond of a surety company authorized to do business in

the state in an amount as provided by rule.

3. A surety in the form of an irrevocable letter of credit in an amount as provided by rule guaranteed by an acceptable financial institution.

(b) An applicant for a drilling, production, or injection well permit, or a permittee who intends to continue participating in long-term production activities of such wells, has the option to provide surety to the department by paying an annual fee to the Minerals Trust Fund. For an applicant or permittee choosing this option the following shall apply:

1. For the first year, or part of a year, of a drilling, production, or injection well permit, or change of operator, the fee is $4,000 per permitted well.

2. For each subsequent year, or part of a year, the fee is $1,500 per permitted well.

3. The maximum fee that an applicant or permittee may be required to pay into the trust fund is $30,000 per calendar year, regardless of the number of permits applied for or in effect.

4. The fees set forth in subparagraphs 1., 2., and 3. shall be reviewed by the department on a biennial basis and adjusted for the cost of inflation. The department shall establish by rule a suitable index for implementing such fee revisions.

(c) An applicant for a drilling or operating permit for operations planned in coastal waters that by their nature warrant greater surety shall provide surety only in accordance with paragraph (a), or similar proof of financial responsibility other than as provided in paragraph (b). For all such applications, including applications pending at the effective

date of this act and notwithstanding the provisions of paragraph (b), the Governor and Cabinet in their capacity as the Administration Commission, at the recommendation of the Department of Environmental Protection, shall set a reasonable amount of surety required under this subsection. The surety amount shall be based on the projected cleanup costs and natural resources damages resulting from a maximum oil spill and adverse hydrographic and atmospheric conditions that would tend to transport the oil into environmentally sensitive areas, as determined by the Department of Environmental Protection.

Section 7. Paragraph (a) of subsection (1) of section 377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1)(a) Any person who violates any provision of this law or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1) or to store gas in a natural gas storage facility, or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products, or storage of gas in a natural gas storage facility, who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state. Furthermore, such person,

lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty in an amount of not more than $25,000 ~~$10,000~~ for each offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. Nothing herein shall give the department the right to bring an action on behalf of any private person.

Section 8. Section 377.45, Florida Statutes, is created to read:

377.45 High pressure well stimulation chemical disclosure registry.—

(1)(a) The department shall designate the national chemical registry, known as FracFocus, developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission, as the state's registry for chemical disclosure for all wells on which high pressure well stimulations are performed. The department shall provide a link to FracFocus through the department's website.

(b) In addition to providing such information to the department as part of the permitting process, a service provider, vendor, or well owner or operator shall report, by department rule, to the chemical disclosure registry, at a minimum, the following information:

1. The owner's or operator's name;

2. The date of completion of the high pressure well stimulation;

3. The county in which the well is located;

4. The API number for the well;

5. The well name and number;

6. The longitude and latitude of the wellhead;

7. The total vertical depth of the well;

8. The total volume of water used in the high pressure well stimulation; and

9. Each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2) for each well on which a high pressure well stimulation is performed.

(c) If the chemical disclosure registry cannot accept and make publicly available any information specified in this section, the service provider, vendor, or well owner or operator shall submit the information required under paragraph (b) to the department.

(2) A service provider, vendor, or well owner or operator shall:

(a) Report the information required under subsection (1) to the chemical disclosure registry within 60 days after the initiation of the high pressure well stimulation for each well on which such high pressure well stimulation is performed; and

(b) Update the chemical disclosure registry and notify the department if any chemical ingredient not previously reported is intentionally included and used for the purpose of performing a high pressure well stimulation.

(3) This section does not apply to an ingredient that:

(a) Is not intentionally added to the high pressure well stimulation;

(b) Occurs incidentally or is otherwise unintentionally present in a high pressure well stimulation; or

(c) Is considered proprietary business information, as defined in s. 377.24075(1)(a)-(e).

Section 9. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

WD

SB 1468
Bill Number (if applicable)

819680
Amendment Barcode (if applicable)

Topic Definition of fracking

Name Debbie Harrison Rumberger

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Address 540 Beverly Ct
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Tallahassee FL 32301
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Email LWVFadvocacy@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

SB 1468
Bill Number (if applicable)

335095
Amendment Barcode (if applicable)

Topic Fracking study by DEP

Name Debbie Harrison Rumberger

Job Title Legislative Liason

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/2015
Meeting Date

SB 1468
Bill Number (if applicable)

559428
Amendment Barcode (if applicable)

Topic Oil & Gas Resources

Name Eric Hamilton

Job Title Associate Director

Address 215 S. Monroe St, Suite 800
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Tallahassee FL 32309
City *State* *Zip*

Phone (850) 561-6300

Email hamiltone@api.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Petroleum Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/14/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

SB 1468
Bill Number (if applicable)

193376
Amendment Barcode (if applicable)

Topic _____

Name Eric Hamilton

Job Title Associate Director

Address 215 S. Monroe St., Suite 800 Phone (850) 521-6300
Street

Tallahassee FL 32309 Email hamiltone@api.org
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Petroleum Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Apr. 15, 2014
Meeting Date

1962
Bill Number (if applicable)

Topic Fracking

Amendment Barcode (if applicable)

Name John Dickert

Job Title Retired Professional Engineer

Address 193 NW Hamilton Ave
Street

Madison FL 32340
City *State* *Zip*

Phone 973-3699

Email johnw512@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 15, 2014
Meeting Date

1468
Bill Number (if applicable)

Topic Fracking bill 1468

Amendment Barcode (if applicable)

Name Gale Dickert

Job Title

Address 193 NW Hamilton Ave.
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Madison, FL 32340
City *State* *Zip*

Phone 973-3699

Email johnw512e@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing people of Madison County - Resolution for a ban

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14-15
Meeting Date

SB 1468
Bill Number (if applicable)

Topic Oil & Gas

Amendment Barcode (if applicable)

Name Stephanie Kunkel

Job Title

Address 1143 Albritton Dr
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Tallahassee FL 32301
City *State* *Zip*

Phone 850-320-4208

Email Stef.Kunkel@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Conservancy of Southwest Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

SB 1468
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Juan Paz

Job Title Policy Coordinator

Address 403 Hayden RD
Street

Tallahassee FL 32304
City *State* *Zip*

Phone 954-918-4653

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Retrieve Energy Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-14-15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1468

Meeting Date *Bill Number (if applicable)*

Topic Fracking Regulations *Amendment Barcode (if applicable)*

Name Brian Lee

Job Title Director of Research & Policy

Address 1603 Sauls ST Phone (850) 766-7309

Street

Tallahassee FL 32308 Email:

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing RethinkEnergy Florida

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-14-15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1468

Meeting Date *Bill Number (if applicable)*

Topic Fracking Permitting *Amendment Barcode (if applicable)*

Name Amy Datz

Job Title Retired Environmental Scientist

Address 1130 Crestview Ave. Phone (850) 322-7599

Street

Tallahassee FL 32303 Email amaliecdatz@mac.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Environmental Caucus of FL.

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1468
Bill Number (if applicable)

Topic FRACKING PERMIT

Amendment Barcode (if applicable)

Name PATRICIA T. THOM

Job Title MEMBER FLA ENVIRONMENTAL CAUCUS
RETIRED STATE OF FLA - 35 YEARS

Address 2985 TETON TRAIL
Street

Phone

TLH., FLA 32303
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLA ENVIRONMENTAL CAUCUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1468
Bill Number (if applicable)

Topic Regional Oil & Gas

Amendment Barcode (if applicable)

Name David Cullen

Job Title

Address 1674 University Pkwy #296 Phone 941-323-2404
Street

Sarasota FL 34243 Email cullensca@aol.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/14/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1468

Meeting Date *Bill Number (if applicable)*

Topic Regulation of Oil and Gas *Amendment Barcode (if applicable)*

Name Mary-Lynn Cullen

Job Title Legislative Liaison

Address 1674 University Pkwy. Phone 941-928-0278

Street

Sarasota FL. 34243 Email aichildren@aol.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Advocacy Institute for Children

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1468
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Fracking

Name Barbara Donaldson

Job Title Retired

Address 1124 Alameda Dr.
Street

Tallahassee, Fl. 32317
City *State* *Zip*

Phone 850-556-0190

Email barbara0190@comcast.net

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Environmental Caucus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-14-15
Meeting Date

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

1468
Bill Number (if applicable)

Topic Fracking - Permitting

Amendment Barcode (if applicable)

Name DR. Ron Saff

Job Title Physian

Address

Phone 850 766 - 7886

Street

Tallahassee FL.

Email Ronsaff@aol.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Physicians for Social Responsibility

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14-15
Meeting Date

1468/1582
Bill Number (if applicable)

Topic FRACKING

Amendment Barcode (if applicable)

Name Ray Blondeau

Job Title Attorney at Law

Address 6712 BUCK LAKE Rd.
Street
TALLAHASSEE FL 32317
City *State* *Zip*

Phone 850-877-9599

Email RFBL@COMCAST.COM

Speaking: ☐ For ☑ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14-15
Meeting Date

1468 / 1582
Bill Number (if applicable)

Topic FRACKING

Amendment Barcode (if applicable)

Name KAY NEWMAN

Job Title CPA

Address 6712 BUCK LAKE RD
Street

TALLAHASSEE
City *State* *Zip*

Phone 850-877-9599

Email kayenc@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/14/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1468

Meeting Date *Bill Number (if applicable)*

Topic REGULATION *Amendment Barcode (if applicable)*

Name GAIL MARIE PERRY

Job Title CHAIR

Address PO Box 17166 Phone 954 850 4055

Street

POMPANO BCH FLA 33061 Email woobusyjobs@hotmail.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing COMMUNICATIONS WORKERS of AMERICA

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1468
Bill Number (if applicable)

Topic Regulation of Oil & Gas

Amendment Barcode (if applicable)

Name Paula Cobb

Job Title Deputy Secretary of Regulatory Programs

Address 3900 Commonwealth Blvd.
Street

Phone (850) 245-2011

Tallahassee FL 32399
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing DEP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

SB 1468
Bill Number (if applicable)

Topic Oil & Gas

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ~~For~~ Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes ~~No~~

Lobbyist registered with Legislature: ~~Yes~~ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/14/15
Meeting Date

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

SB 1468
Bill Number (if applicable)

Topic Fracking

Amendment Barcode (if applicable)

Name Debbie Harrison Rumberger

Job Title Legislative Liason

Address 540 Beverly Ct
Street

Tallahassee FL 32301
City *State* *Zip*

Phone (850) 224-2545

Email LwvFadvocacy@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/2015
Meeting Date

SB 1468
Bill Number (if applicable)

Topic Oil & Gas Resources

Amendment Barcode (if applicable)

Name Eric R Hamilton

Job Title Associate Director

Address 215 S. Monroe St., Suite 800
Street

Tallahassee FL 32301
City *State* *Zip*

Phone (850) 561-6300

Email hamiltone@api.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Petroleum Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-14-15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1468

Meeting Date *Bill Number (if applicable)*

Topic Fracking *Amendment Barcode (if applicable)*

Name Debbie Hamilton Rumberger

Job Title Legislative Liaison

Address 540 Lively Court Phone 224-2545

Street

Tallahassee FL 32304 Email Luvfadvocate@gmail.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information Waive Speaking: ☐ In Support ☒ Against

(The Chair will read this information into the record.)

Representing FLORIDA League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/CS/SB 1538 (135364)
INTRODUCER:	Appropriations Subcommittee on General Government; Communications, Energy, and Public Utilities Committee; and Senator Simpson
SUBJECT:	Natural Gas Rebate Program
DATE:	April 16, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.	Blizzard	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1538 amends s. 377.810, F.S., to authorize the Department of Agriculture and Consumer Services (DACS) to use unencumbered funds from the natural gas fuel fleet vehicle rebate program for additional or new rebates.

The bill also creates a heavy transportation industry natural gas rebate program within the DACS. The DACS is authorized to award rebates for "eligible costs," a term defined to mean the cost of conversion, purchase, or lease of a locomotive, ship, or high horsepower engines which use natural gas fuel and which is placed into service on or after January 1, 2015.

The rebate:

- May not exceed 50 percent of the eligible costs of a natural gas locomotive or ship with a dedicated or bi-fuel natural gas fuel operating system placed into service on or after January 1, 2015;
- Is limited to a maximum of $500,000 per vehicle;
- Is limited to a total of $1,000,000 per applicant per fiscal year; and
- Is limited to fuel powered natural gas locomotives and ships that comply with applicable United States Environmental Protection Agency emission standards.

To receive a rebate, an applicant must submit to the DACS an application which meets specified requirements as to content. The total amount of rebates in each fiscal year may not exceed the

amount appropriated for the program in that fiscal year. Rebates are to be allocated to eligible applicants on a first-come, first-served basis, determined by the date the application is received, until all appropriated funds for the fiscal year are expended or the program ends, whichever comes first. Incomplete applications will not be accepted and do not secure a place in the first-come, first-served application process. The bill requires the DACS to determine and publish on its website, on a continuing basis, the amount of available funding for rebates remaining in each fiscal year.

The bill authorizes the DACS to adopt rules to implement and administer this section by January 1, 2016. By December 1, 2016, and each subsequent year of the rebate program, the DACS must provide an assessment of the program to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability.

The bill authorizes an appropriation to the DACS from the General Revenue Fund beginning in the 2015-2016 fiscal year through the 2019-2020 fiscal year, for the heavy transportation industry natural gas rebate program, but does not provide a specific amount of funding. The DACS has indicated it will require one position and $67,131 from the General Revenue Fund to implement the provisions in this bill.

The bill takes effect July 1, 2015.

II. Present Situation:

Section 377.810, F.S., creates the natural gas fuel fleet vehicle rebate program within the DACS for the purpose of helping to reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state.

Forty percent of the annual refund allocation is reserved for governmental applicants, with the remaining funds allocated for commercial applicants. A rebate may not exceed 50 percent of the eligible costs of a natural gas fuel fleet vehicle with a dedicated or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2013. An applicant is eligible to receive a maximum rebate of $25,000 per vehicle up to a total of $250,000 per fiscal year. All natural gas fuel fleet vehicles eligible for the rebate must comply with applicable United States Environmental Protection Agency emission standards.

An applicant seeking to obtain a rebate must submit an application to the DACS by a specified date each year as established by department rule. The application must include:

- A complete description of all eligible costs,
- Proof of purchase or lease of the vehicle for which the applicant is seeking a rebate,
- A copy of the vehicle registration certificate,
- A description of the total rebate sought by the applicant,
- An affidavit from the applicant certifying that all information contained in the application is true and correct; and
- Any other information deemed necessary by the DACS.

The total amount of rebates allocated to certified applicants in each fiscal year may not exceed the amount appropriated for the program in the fiscal year. Rebates are allocated to eligible applicants on a first-come, first-served basis, determined by the date the application is received, until all appropriated funds for the fiscal year are expended or the program ends, whichever comes first. Incomplete applications submitted to the DACS are not accepted and do not secure a place in the first-come, first-served application process.

The DACS is required to determine and publish on its website, on an ongoing basis, the amount of available funding for rebates remaining in each fiscal year.

By October 1 of each year that the program is funded, the DACS must provide an annual assessment of the use of the rebate program during the previous fiscal year to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability. The assessment must include, at a minimum, the following information:

- The name of each applicant awarded a rebate;
- The amount of the rebates awarded to each applicant;
- The type and description of each eligible vehicle for which each applicant applied for a rebate; and
- The aggregate amount of funding awarded for all applicants claiming rebates.

By January 31, 2016, the Office of Program Policy Analysis and Government Accountability must release a report reviewing the rebate program to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The review must include an analysis of the economic benefits resulting to the state from the program.

Currently, there is no state incentive for the conversion to, purchase, or lease of natural gas fuel powered heavy transportation assets such as locomotives, waterborne ships, and high horsepower transportation engines.

III. Effect of Proposed Changes:

PCS/CS/SB 1538 amends s. 377.810, F.S., to authorize the DACS to use unencumbered natural gas fuel fleet vehicle rebate program funds for additional or new rebates. The DACS is authorized to receive additional applications between June 1 and June 30 from applicants that have reached the program maximum of $250,000 per fiscal year. The bill authorizes the DACS to expend unencumbered funds remaining after June 30 of each fiscal year to award additional or new rebates, with preference given to governmental applicants. Any remaining unencumbered funds may be expended for commercial applicant rebates. Applicants are eligible to receive rebates on a first-come, first-served basis, until all funds for the fiscal year are expended or the program ends, whichever comes first.

The bill creates a heavy transportation industry natural gas rebate program within the DACS for the purpose of helping to reduce transportation costs in this state, encouraging the use of a domestic fuel source, and encouraging freight mobility investments that contribute to the economic growth of the state. The DACS is to award rebates for “eligible costs,” a term defined

to mean the cost of conversion[1] or the incremental cost[2] incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least ten years, of a locomotive, ship, or other high horsepower engine placed into service on or after July 1, 2015.[3]

The rebate:

- May not exceed 50 percent of the eligible costs of a natural gas locomotive or ship with a dedicated or bi-fuel natural gas fuel[4] operating system placed into service on or after January 1, 2015;
- Is limited to a maximum of $500,000 per vehicle;
- Is limited to a total of $1,000,000 per applicant per fiscal year; and
- Is limited to fuel powered natural gas locomotives and ships that comply with applicable United States Environmental Protection Agency emission standards.

To receive a rebate, an applicant must submit an application to the DACS by a date established by department rule. The application must include:

- A complete description of all eligible costs;
- Proof of purchase or lease of the locomotive or ship for which the applicant is seeking a rebate;
- A copy of the vehicle registration certificate;
- A description of the total rebate sought by the applicant;
- An affidavit from the applicant certifying that all information contained in the application is true and correct; and
- Any other information deemed necessary by the DACS and set forth in department rule.

The bill requires the DACS to determine the rebate eligibility of each applicant in accordance with the requirements of this section and department rule. The total amount of rebates allocated to certified applicants in each fiscal year may not exceed the amount appropriated for the program in the fiscal year. Rebates are to be allocated to eligible applicants on a first-come, first-served basis, determined by the date the application is received, until all appropriated funds for the fiscal year are expended or the program ends, whichever comes first. Incomplete applications submitted to the DACS will not be accepted and do not secure a place in the first-come, first-served application process. The DACS is required to determine and publish on its website on an ongoing basis, the amount of available funding for rebates remaining in each fiscal year.

The bill authorizes the DACS to adopt rules to implement and administer this section by December 31, 2015, including rules relating to the forms required to claim a rebate, the required

[1] The bill defines the term "conversion costs" to mean the excess cost associated with retrofitting a diesel or gasoline powered locomotive or ship to a natural gas fuel powered motor vehicle.
[2] The bill defines the term "incremental costs" to mean the excess costs associated with the purchase or lease of a natural gas fuel powered locomotive or ship as compared to an equivalent diesel- or gasoline-powered locomotive or ship.
[3] The definition expressly excludes costs relating to fueling infrastructure.
[4] The bill defines the term "natural gas fuel" to mean any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23). This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.

documentation and basis for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants.

By December 1, 2016, and each year thereafter that the program is funded, the DACS must provide an annual assessment of the use of the rebate program during the previous fiscal year. The report must be provided to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability. The assessment must include, at a minimum:

- The name of each applicant awarded a rebate under this section;
- The amount of the rebates awarded to each applicant;
- The type and description of each eligible locomotive or ship for which each applicant applied for a rebate; and
- The aggregate amount of funding awarded for all applicants claiming rebates under this section.

Beginning in the 2015-2016 fiscal year, and each year thereafter through the 2019-2020 fiscal year, the bill authorizes that the General Appropriations Act may provide a specific appropriation in each fiscal year from the General Revenue Fund to the DACS, for the purpose of funding the heavy transportation industry natural gas rebate program.

The bill takes effect July 1, 2015.

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:

PCS/CS/SB 1538 provides that:

- Rebates are to be awarded for "eligible costs," a term defined to mean the cost of conversion or the incremental cost incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 5 years, of a locomotive or ship placed into service on or after January 1, 2015;
- Rebates are to be limited by four express restrictions or conditions;
- To receive a rebate, an application meeting specified requirements must be submitted to the DACS;

- The DACS is authorized to adopt rules to implement and administer the bill's provisions, including rules relating to the basis for establishing eligibility for a rebate; and
- The DACS is required to determine the rebate eligibility of each applicant in accordance with the requirements in the bill and department rule.

It is unclear what additional eligibility requirements the bill contemplates will be established by department rule, and what legislative guidance the bill provides for crafting such rules. Dependent upon how the DACS implements the eligibility provisions, the uncertainty of legislative direction may raise issues of unlawful delegation of legislative authority. For example, the bill's provisions requiring that a vehicle have sufficient usage in Florida to be eligible for a rebate do not appear to apply to a vehicle used for nonhighway transportation purposes that has a high horsepower engine. If the rules created such a requirement, it may be subject to challenge.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 1538 may provide a rebate to those who own a locomotive or ship and convert it to natural gas fuel, or who purchase or lease a locomotive or ship that uses natural gas fuel.

The bill may benefit importers and suppliers of natural gas fuel, and, to the extent that it creates additional demand for natural gas fuel, may encourage investments in fueling infrastructure in Florida.

C. Government Sector Impact:

Natural Gas Fuel Fleet Vehicle Rebate Program

The bill authorizes the DACS to receive additional applications between June 1 and June 30 of each fiscal year from applicants that have reached the program maximum of $250,000. The DACS is authorized to use unencumbered funds remaining after June 30 of each fiscal year to award additional or new rebates of up to $250,000, with preference given to governmental applicants. Any remaining, unencumbered funds may be expended for commercial applicant rebates. In Fiscal Year 2013-2014, $2,128,397 from the General Revenue Fund was unencumbered and reverted from the natural gas fuel fleet vehicle rebate program.

Heavy Transportation Industry Natural Gas Rebate Program

For the 2015-2016 fiscal year through the 2019-2020 fiscal year, the bill authorizes an appropriation to the DACS from the General Revenue Fund for the heavy transportation

industry natural gas rebate program, but does not provide a specific amount of funding. The DACS advises it will require one position and $61,146 in recurring funds and $5,985 in nonrecurring funds from the General Revenue Fund to implement the provisions in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 377.810 of the Florida Statutes.

This bill creates section 377.811 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 14, 2015:
The committee substitute:

- Authorizes the DACS to expend unencumbered natural gas fuel fleet vehicle rebate program funds on additional applications received between June 1 and June 30 that have met the program maximum of $250,000 per fiscal year; and
- Authorizes the DACS to use unencumbered funds remaining after June 30 each fiscal year to award additional rebates, giving preference to governmental applicants.

CS by Communications, Energy, and Public Utilities on March 24, 2015:

- Amends s. 377.810, F.S., to authorize DACS to use unencumbered natural gas fuel fleet vehicle rebate program funds for additional or new rebates;
- Amends the newly created new heavy transportation industry natural gas rebate program, including:
  - Requiring in the definition of "eligible costs" a lease be for at least 10 years (5 years in the original bill);
  - Adding to the definition of "eligible vehicle" any vehicle with a "high horsepower engine";
  - Defining "high horsepower engine" as one providing more than 1,000 horsepower and used for nonhighway transportation purposes;
  - Deleting the requirement that OPPAGA do an annual report analyzing the benefits to the state resulting from the program; and
  - Inserting an appropriation section that states that, beginning in the 2015-2016 fiscal year and continuing through the 2019-2020 fiscal year, the General

Appropriations Act may provide a specific appropriation from the General Revenue Fund to DACS for funding of this rebate program.

B. Amendments:

None.

206856

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 36 - 42

and insert:

vehicle up to a total of $250,000 per fiscal year. On or after June 30 of each fiscal year the department may receive additional applications from applicants that have met the program maximum of $250,000 per fiscal year. Those applicants may apply for additional funds for vehicles that have not received a rebate, a maximum rebate of $25,000 per vehicle up to

206856

a total of $250,000. Any unencumbered funds remaining after June 30 of each fiscal year may be used by the department to award the additional rebates. Governmental applicants shall have preference and all remaining unencumbered funds may be used by commercial applicants. Rebates shall be allocated to eligible applicants on a first-come, first-served basis, determined by the date the application is received, until all appropriated funds for the fiscal year are expended or the program ends, whichever comes first. All natural

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

And the title is amended as follows:

Delete lines 4 - 6

and insert:

of Agriculture and Consumer Services to receive additional applications from certain applicants; authorizing any remaining unencumbered funds to be used by the department to award additional rebates; creating s. 377.811, F.S.;

635746

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
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	.	

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

Senate Amendment to Amendment (206856)

Delete lines 5 - 6

and insert:

vehicle up to a total of $250,000 per fiscal year. Between June 1 and June 30 of each fiscal year the department may receive

By the Committee on Communications, Energy, and Public Utilities; and Senator Simpson

579-02833-15 20151538c1

A bill to be entitled

An act relating to a natural gas rebate program; amending s. 377.810, F.S.; authorizing the Department of Agriculture and Consumer Services to award additional rebates for certain applicants using unencumbered funds; creating s. 377.811, F.S.; creating the heavy transportation industry natural gas rebate program within the department; defining terms; prescribing powers and duties of the department with respect to the program; prescribing limits on rebate awards; providing policies and procedures for application approval; authorizing the department to adopt rules by a specified date; requiring the department to publish on its website the availability of rebate funds; requiring the department to submit an annual assessment to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability by a specified date; authorizing an appropriation; providing an effective date.

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

Section 1. Subsection (3) of section 377.810, Florida Statutes, is amended to read:

377.810 Natural gas fuel fleet vehicle rebate program.—

(3) NATURAL GAS FUEL FLEET VEHICLE REBATE.—The department shall award rebates for eligible costs as defined in this section. Forty percent of the annual allocation shall be

579-02833-15 20151538c1

reserved for governmental applicants, with the remaining funds allocated for commercial applicants. A rebate may not exceed 50 percent of the eligible costs of a natural gas fuel fleet vehicle with a dedicated or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2013. An applicant is eligible to receive a maximum rebate of $25,000 per vehicle up to a total of $250,000 per fiscal year. Any unencumbered funds remaining after May 1 of each fiscal year may be used by the department to award an additional rebate of up to $250,000 for a governmental applicant. Any unencumbered funds remaining after June 1 of each fiscal year may be used by the department to award an additional or new rebate of up to $250,000 for a governmental or commercial applicant. All natural gas fuel fleet vehicles eligible for the rebate must comply with applicable United States Environmental Protection Agency emission standards.

Section 2. Section 377.811, Florida Statutes, is created to read:

377.811 Heavy transportation industry natural gas rebate program.—

(1) CREATION AND PURPOSE OF PROGRAM.—There is created within the Department of Agriculture and Consumer Services a heavy transportation industry natural gas rebate program. The purpose of this program is to help reduce transportation costs in this state, encourage the use of a domestic fuel source, and encourage heavy transportation industry investments that contribute to the economic growth of the state.

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

(a) "Conversion costs" means the costs associated with

retrofitting a diesel-, gasoline-, or heavy fuel oil- powered locomotive, waterborne ship, or other high horsepower engine to a natural gas powered eligible vehicle.

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

(c) "Eligible costs" means the conversion costs or the incremental costs incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 10 years of a natural gas-powered eligible vehicle. The term does not include costs for project development, fueling stations, or other fueling infrastructure.

(d) "Eligible vehicle" means one or more locomotives, waterborne ships, or other high horsepower engines used for transportation purposes registered or licensed in this state and used for commercial business or governmental purposes. Eligible vehicles must be newly constructed or repowered and placed into service on or after July 1, 2015. Waterborne ships must be built and documented in the United States with a coastwise endorsement under the Jones Act, 46 U.S.C. s. 55102, and used to provide regular transportation of merchandise between one or more ports in this state and other domestic ports. If the eligible vehicle is registered with a federal regulatory body, the owner must certify in writing that the eligible vehicle will be used the majority of the time in this state or a waterborne ship that uses a port in this state in its rotation, subject to department review.

(e) "High horsepower engine" means any engine that provides more than 1,000 horsepower and is used for nonhighway transportation purposes.

(f) "Incremental costs" means the excess costs associated with the purchase or lease of a natural gas-powered eligible vehicle as compared to an equivalent diesel-, gasoline-, or heavy fuel oil- powered eligible vehicle.

(g) "Natural gas fuel" means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in an eligible vehicle. This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. The term does not include natural gas or liquefied petroleum placed in a separate tank for cooking, heating, water heating, or electric generation.

(3) HEAVY TRANSPORTATION INDUSTRY NATURAL GAS REBATE.—The department shall award rebates for eligible costs. A rebate may not exceed 50 percent of the eligible costs of a natural gas eligible vehicle with a dedicated or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2015. An applicant is eligible to receive a maximum rebate of $500,000 per eligible vehicle up to a total of $1 million per fiscal year. All eligible vehicles must comply with applicable United States Environmental Protection Agency emission standards.

(4) APPLICATION PROCESS.—

(a) An applicant seeking to obtain a rebate shall submit an application to the department by a specified date each year as established by department rule. The application must require a complete description of all eligible costs, proof of purchase or lease of the eligible vehicle for which the applicant is seeking a rebate, a copy of the vehicle registration certificate or

equivalent documentation, a description of the total rebate sought by the applicant, and any other information deemed necessary by the department. The application form adopted by department rule must include an affidavit from the applicant certifying that all information contained in the application is true and correct.

(b) The department shall determine the rebate eligibility of each applicant in accordance with the requirements of this section and department rule. The total amount of rebates allocated to certified applicants in each fiscal year may not exceed the amount appropriated for the program in a fiscal year. Rebates shall be allocated to eligible applicants on a first-come, first-served basis, determined by the date and time the application is received, until all appropriated funds for the fiscal year are expended or the program ends, whichever comes first. Incomplete applications submitted to the department may not be accepted and do not secure a place in the first-come, first-served application process.

(5) RULES.—The department may adopt rules to implement and administer this section by December 31, 2015, including rules relating to the forms required to claim a rebate under this section, the required documentation and basis for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants.

(6) PUBLICATION.—The department shall determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year.

(7) ANNUAL ASSESSMENT.—By December 1, 2016, and each year

thereafter that the program is funded, the department shall provide an annual assessment of the use of the rebate program during the previous fiscal year to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability. The assessment shall include, at a minimum, the following information:

(a) The name of each applicant awarded a rebate under this section;

(b) The amount of the rebates awarded to each applicant;

(c) The type and description of each eligible vehicle for which each applicant applied for a rebate; and

(d) The aggregate amount of funding awarded for all applicants claiming rebates under this section.

(8) APPROPRIATION.—Beginning in the 2015-2016 fiscal year and each year thereafter through the 2019-2020 fiscal year, the General Appropriations Act may provide a specific appropriation in each fiscal year from the General Revenue Fund to the Department of Agriculture and Consumer Services for the purpose of funding the heavy transportation industry natural gas rebate program.

Section 3. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

SB 1538
Bill Number (if applicable)

Topic NATURAL GAS REBATE PROGRAM

Amendment Barcode (if applicable)

Name Bob Ledoux

Job Title Senior Vice President

Address 7150 Philips Highway
Street

Jacksonville FL 32256
City *State* *Zip*

Phone 904-279-3111

Email Robert.Ledoux@fec.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA RAILROAD ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1538
Bill Number (if applicable)

Topic Natural Gas

Amendment Barcode (if applicable)

Name David Rogers

Job Title President

Address 201 S Monroe
Street

Phone 850 509 6760

Tallahassee FL 32301
City *State* *Zip*

Email david.rogers@floridagas.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Natural Gas Assn.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/CS/SB 1548 (488530)
INTRODUCER:	Appropriations Subcommittee on General Government; Environmental Preservation and Conservation Committee; and Senator Dean
SUBJECT:	Vessel Safety
DATE:	April 16, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1548 provides definitions for "developed waterfront property" and "safe harbor." The bill prohibits anchoring and mooring within 200 feet of mooring fields, public boat ramps, hoists, marine railways, and other launching or landing facilities available for use by the general public. The bill also prohibits the anchoring or mooring of vessels within 200 feet of the shoreline of developed waterfront property and provides exceptions. The bill prohibits the anchoring or mooring of a vessel in state waters under certain conditions, except under exigent circumstances. The bill provides an exception to the provisions of s. 327.4107, F.S., created by the bill, for local governments participating in the Anchoring and Mooring Pilot Program. Lastly, the bill provides penalties for violations of s. 327.4107, F.S.

Fines assessed for violation of the provisions of the bill will have a positive, but minor, indeterminate fiscal impact on the Florida Fish and Wildlife Conservation Commission (FWC).

This bill is effective July 1, 2015.

II. Present Situation:

Local governments are prohibited from regulating the anchoring of vessels, other than live-aboard vessels,[1] outside of permitted mooring fields.[2] However, unregulated anchoring and mooring can contribute to various problems, including:

- Unattended vessels;
- Anchored vessels that are dragging anchor or not showing proper lighting;
- Vessels that are not maintained properly;
- Vessels that become derelict; and
- Locations where anchored vessels accumulate.[3]

Anchoring and Mooring Pilot Program

Section 327.4105, F.S., was enacted in 2009 to create the Anchoring and Mooring Pilot Program (program) to, "explore potential options for regulating the anchoring and mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields." The program is directed by the Fish and Wildlife Conservation Commission (FWC) in cooperation with the Department of Environmental Preservation (DEP).

Currently, the only local governmental entities that are allowed to regulate anchoring and mooring outside the marked boundaries of permitted mooring fields are the participants in the program, which include:

- St. Augustine;
- St. Petersburg;
- Sarasota;
- Monroe County – cities of Marathon and Key West; and
- Martin County – City of Stuart.[4]

The program was set to expire on July 1, 2014. Due to challenges that affected the progress of the pilot program, the FWC recommended that the program be extended to July 2017 to provide more time to fully evaluate each of the pilot program locations.[5] The program was extended during the 2014 Regular Legislative Session and will expire on July 1, 2017.[6]

Penalties for Boating Infractions

Section 327.73, F.S., provides for non-criminal violations relating to vessel laws. In addition to civil penalties specified for particular violations, the section provides that a person who fails to appear or otherwise properly respond to a uniform boating citation will be charged with second-

[1] Section 327.02(19), F.S., defines a live-aboard vessel as "a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed pursuant to s. 222.17." The definition excludes commercial fishing boats.
[2] Section 327.60(2)(f), F.S.
[3] FWC, *Anchoring and Mooring Pilot Program, Report of Finding and Recommendations*, 3 (Dec. 31, 2013), *available at* http://myfwc.com/media/2704721/FindingsRecommendations.pdf (last visited Mar. 28, 2015).
[4] *Id.*
[5] *Supra* note 3, 1-2.
[6] Section 327.4105, F.S.

degree misdemeanor, which is punishable by a maximum fine of $500 and no more than 60 days imprisonment.[7]

Derelict Vessels

Section 327.70, F.S., provides a list of noncriminal violations that may be enforced by mailing a uniform boating citation to the registered owner of the unattended vessel anchored, aground, or moored in state waters. These violations relate to:

- Navigational rules; s. 327.33(3)(b), F.S.;
- Interference with navigation; s. 327.44, F.S.;
- Required lights and shapes; s. 327.50(2), F.S.;
- Marine sanitation; s. 327.53, F.S.;
- Display of decal; s. 328.48(5), F.S., and
- Display of number; s. 328.52(2), F.S.

The Division of Law Enforcement within the Fish and Wildlife Conservation Commission and its officers, sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer whom may order the removal of vessels deemed to be an interference or hazard to public safety may issue the noncriminal violations.

III. Effect of Proposed Changes:

Section 1 amends s. 327.02, F.S., to define "developed waterfront property" to mean:

> any upland property bounded on at least one side by the waters of the state, above the mean high water mark of the shoreline or seawall, upon which a single-family home, multi-family apartment, townhouse, condominium, or other similar residential dwelling exists. The term does not include docks and other infrastructure adjacent thereto or properties with mixed residential and commercial use.

The bill also defines "safe harbor" to mean:

> taking refuge by temporarily anchoring, mooring, or docking due to a mechanical breakdown or when imminent or existing extreme weather conditions impose an unreasonable risk of harm. A vessel may remain anchored, moored, or docked until repaired, which must occur within seven working days, or in the event of extreme weather, until weather conditions improve to the point it is no longer perilous to operate the vessel.

Section 2 creates s. 327.4107, F.S., to provide that the anchoring or mooring of vessels, other than live-aboard vessels, on the waters of the state may only be regulated as provided in chs. 327 and 403, F.S., regarding Vessel Safety and Environmental Control, respectively.

[7] Sections 775.082 and 775.083, F.S.

The bill prohibits an owner, operator, or person in charge of a vessel from anchoring or mooring a vessel within 200 feet of:

- The marked boundary of a permitted mooring field;
- A public boat ramp;
- A hoist;
- A marine railway; or
- Other launching or landing facility available for use by the general public.

Additionally, an owner, operator, or person in charge of a vessel may not anchor or moor a vessel within 200 feet of the shoreline of developed waterfront property, as defined in the bill, one hour past sunset and one hour before sunrise except as follows:

- Vessels that require safe harbor, in which case the vessel may remain anchored for seven business days until repaired, or in the event of extreme weather, until weather conditions improve to the point it is no longer perilous to operate the vessel;
- Vessels in transit manned by a captain and crew that is incapable of safely continuing due to physical exhaustion, provided that anchoring or mooring is limited to one overnight period before continuing;
- Vessels owned or operated by a governmental entity for law enforcement, firefighting, or rescue purposes;
- Construction or dredging vessels while on an active job site;
- Vessels actively engaged in commercial fishing;
- Vessels engaged in recreational fishing whereby persons onboard are actively tending hook and line fishing gear or nets; and
- Vessels present for the duration of events as described in s. 327.48, F.S., which pertains specifically to regattas, races, marine parades, tournaments, or exhibitions.

The bill provides that an owner, operator, or person in charge of a vessel may not anchor or moor a vessel if any of the following conditions exist, unless the condition is the result of an exigent circumstance:

- The vessel is taking or has taken on water without effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel is leaking petroleum products or other harmful contaminants in violation of law;
- The vessel has broken loose or is in danger of breaking loose from its anchor or mooring;
- The vessel is involved in one or more violations of marine sanitation laws; or
- The vessel is listing due to water intrusion, or is sunk, partially sunken, or left aground and is unattended.

The bill provides that a person who anchors or moors a vessel in violation of s. 327.4107, F.S., which is created in this section of the bill, commits a noncriminal infraction, punishable as provided in s. 327.73, F.S., which is amended in Section 3 of the bill.

The bill provides that penalties provided in this section are in addition to penalties already provided for in Florida Statutes.

The bill provides that counties or municipalities participating in the Anchoring and Mooring Pilot Program may continue to regulate the anchoring or mooring of non-live-aboard vessels as provided in s. 327.4105, F.S., which authorizes the Anchoring and Mooring Pilot Program.

Section 3 amends s. 327.70, F.S., to add the newly created s. 327.4107, F.S., to the list of noncriminal violations that may be enforced by mailing a uniform boating citation to the registered owner of the unattended vessel. The entities that may issue the citation are the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer whom may order the removal of vessels deemed to be an interference or hazard to public safety.

Section 4 amends s. 327.73, F.S., to provide for a civil penalty for an infraction of provisions of s. 327.4107, F.S., created in Section 2 of the bill. The penalties provided are:

- For a first offense, $50;
- For a second offense, $100; and
- For a third or subsequent offense, $250.

Section 5 amends s. 327.391, F.S., to correct and conform a cross reference. Section 327.391(1), F.S., incorrectly cross references to s. 327.02(25), F.S., defining "moored ballooning," instead of the correct cross reference to s. 327.02(27), F.S., defining "muffler."

Section 6 provides an effective date of July 1, 2015.

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 fines assessed for violations of the provisions of PCS/CS/SB 1548 will have a negative, but minor, indeterminate impact for individuals guilty of violating the provisions of the bill.

There could be a negative fiscal impact if the setback provisions affect areas where vessels traditionally anchor, particularly if businesses have developed around such anchorages.

C. Government Sector Impact:

The fines assessed for violations of the provisions of the bill will have a positive, but minor, indeterminate fiscal impact on the Florida Fish and Wildlife Conservation Commission.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides an exception to the prohibition on anchoring or mooring within 200 feet of the shoreline of developed waterfront property for vessels in transit upon which the captain and crew are incapable of safely continuing their journey due to physical exhaustion. The term "captain and crew" is not defined in statute, which may lead to different interpretations.

The bill also provides an exception to the prohibition on anchoring or mooring within 200 feet of the shoreline of developed waterfront property for, "[v]essels engaged in recreational fishing whereby persons onboard are actively tending hook and line fishing gear or nets." This does not appear to include all forms of active recreational fishing.

According to the FWC, some challenges with the definition of "developed waterfront property" may include confusion on the part of boat owners and operators, as well as law enforcement officers, whether or not a waterfront property has mixed residential and commercial use from the vantage point of the adjacent waterway.

The bill provides exemptions to the 200 foot setback provision from the shoreline of developed waterfront property. According to the FWC, in some areas of limited waterbody width, historic anchorages may be excluded by this law or may be decreased in size such that the only legal place to anchor in such an area will be closer to marked or historic navigation channels.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.02 and 327.73.

This bill creates section 327.4107 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 14, 2015:
The CS/CS provides that the entities responsible for enforcing boating regulations in the state are also responsible for enforcing the newly created s. 327.4107, F.S.

CS by Environmental Preservation and Conservation on March 31, 2015:
- Changes the term "working days" to "business days";
- Changes the term "active recreational fishing" to "recreational fishing whereby persons onboard are actively tending hook and line fishing gear or nets" for clarification;
- Provides an exception from the provisions of the bill for local government participants in the Anchoring and Mooring Pilot Program;
- Provides an exception to the prohibition on anchoring or mooring within 200 feet of the shoreline of developed waterfront property between one hour past sunset and one hour before sunrise for vessels in transit whose captain and crew are too exhausted to continue for the night;
- Provides an exception to the prohibition on anchoring or mooring in state waters for exigent circumstances;
- Removes the prohibition on anchoring and mooring in state waters when a vessel is incapable of navigating under its own propulsion; and
- Provides that penalties provided for in the bill are in addition to any other penalties provided for in the Florida Statutes.

B. Amendments:

None.

964588

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Dean) recommended the following:

Senate Amendment

Delete lines 60 - 80
and insert:
may remain anchored or moored for 7 business days until repaired, or in the event of extreme weather, until weather conditions improve to the point where it is no longer perilous to operate the vessel.

2. Vessels in transit upon which the owner, operator, or person in charge of the vessel is incapable of safely operating

964588

the vessel due to physical exhaustion, provided that anchoring or mooring is limited to one overnight period.

3. Vessels owned or operated by a governmental entity for law enforcement, firefighting, or rescue purposes.

4. Construction or dredging vessels while on an active job site.

5. Vessels actively engaged in commercial fishing.

6. Vessels engaged in recreational fishing whereby persons, onboard or in the water in the immediate vicinity of the vessel, are actively tending fishing gear other than traps.

7. Vessels present for the duration of events as described in s. 327.48.

(c) An owner, operator, or person in charge of a vessel may not anchor or moor a vessel if any of the following circumstances exist unless the vessel requires safe harbor, in which case a vessel may remain anchored, moored, or docked until repaired, which must occur within 7 business days:

554434

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 103 - 110
and insert:
Section 3. Paragraph (a) of subsection (2) of section 327.70, Florida Statutes, is amended to read:
327.70 Enforcement of this chapter and chapter 328.—
(2)(a) Noncriminal violations of the following statutes may be enforced by a uniform boating citation mailed to the registered owner of an unattended vessel anchored, aground, or

554434

moored on the waters of this state:

1. Section 327.33(3)(b), relating to navigation rules.

2. Section 327.44, relating to interference with navigation.

3. Section 327.50(2), relating to required lights and shapes.

4. Section 327.53, relating to marine sanitation.

5. Section 328.48(5), relating to display of decal.

6. Section 328.52(2), relating to display of number.

7. Section 327.4107, relating to circumstances when a vessel is at risk of becoming derelict.

Section 4. Paragraph (y) is added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(y) Section 327.4107, relating to the anchoring of vessels outside public mooring fields, for which the civil penalty is:

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

And the title is amended as follows:

Delete line 10

and insert:

program; amending s. 327.70, F.S.; authorizing the mailing of a uniform boating citation to the registered owner of an unattended vessel for circumstances when a vessel is at risk of becoming derelict; amending s. 327.73, F.S.; specifying the

By the Committee on Environmental Preservation and Conservation; and Senator Dean

592-03279-15 20151548c1

A bill to be entitled

An act relating to vessel safety; amending s. 327.02, F.S.; defining the terms "developed waterfront property" and "safe harbor"; creating s. 327.4107, F.S.; specifying how vessels may be anchored or moored outside public mooring fields on the waters of this state; providing a noncriminal infraction; providing an exception for counties or municipalities participating in the anchoring and mooring pilot program; amending s. 327.73, F.S.; specifying the noncriminal infraction for violations of s. 327.4107, F.S.; amending s. 327.391, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (9) through (39) are redesignated as subsections (10) through (40), respectively, and present subsections (40) through (44) are redesignated as subsections (42) through (46), respectively, of section 327.02, Florida Statutes, and new subsections (9) and (41) are added to that section, to read:

327.02 Definitions.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(9) "Developed waterfront property" means any upland property bounded on at least one side by the waters of the state, above the mean high water mark of the shoreline or seawall, upon which a single-family home, multi-family

592-03279-15 20151548c1

apartment, townhouse, condominium, or other similar residential dwelling exists. The term does not include docks and other infrastructure adjacent thereto or properties with mixed residential and commercial use.

(41) "Safe harbor" means taking refuge by temporarily anchoring, mooring, or docking due to a mechanical breakdown or when imminent or existing extreme weather conditions impose an unreasonable risk of harm. A vessel may remain anchored, moored, or docked until repaired, which must occur within 7 business days, or in the event of extreme weather, until weather conditions improve to the point where it is no longer perilous to operate the vessel.

Section 2. Section 327.4107, Florida Statutes, is created to read:

327.4107 Anchoring and mooring of vessels outside public mooring fields.—

(1) The anchoring or mooring of a vessel other than live-aboard vessels on the waters of this state may be regulated only as provided in this chapter and chapter 403.

(a) An owner, operator, or person in charge of a vessel may not anchor or moor a vessel within 200 feet of the marked boundary of a permitted mooring field, any public boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general public.

(b) An owner, operator, or person in charge of a vessel may not anchor or moor a vessel within 200 feet of the shoreline of developed waterfront property, as defined in s. 327.02, between the times of one hour past sunset and one hour before sunrise except as follows:

1. Vessels requiring safe harbor, in which case the vessel may remain anchored for 7 business days until repaired, or in the event of extreme weather, until weather conditions improve to the point where it is no longer perilous to operate the vessel.

2. Vessels in transit upon which the captain and crew are incapable of safely continuing their journey due to physical exhaustion, provided that anchoring or mooring is limited to one overnight period before continuing toward its destination.

3. Vessels owned or operated by a governmental entity for law enforcement, firefighting, or rescue purposes.

4. Construction or dredging vessels while on an active job site.

5. Vessels actively engaged in commercial fishing.

6. Vessels engaged in recreational fishing whereby persons onboard are actively tending hook and line fishing gear or nets.

7. Vessels present for the duration of events as described in s. 327.48.

(c) An owner, operator, or person in charge of a vessel may not anchor or moor a vessel if any of the following conditions exist, unless the condition is a result of an exigent circumstance:

1. The vessel is taking or has taken on water without an effective means to dewater.

2. Spaces on the vessel which are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.

3. The vessel is leaking petroleum products or other harmful contaminants in violation of law.

4. The vessel has broken loose or is in danger of breaking loose from its anchor or mooring.

5. The vessel is involved in one or more violations of marine sanitation laws.

6. The vessel is listing due to water intrusion, is sunk, partially sunken, or is left aground while unattended.

(2) A person who anchors or moors a vessel in violation of this section commits a noncriminal infraction, punishable as provided in s. 327.73.

(3) Penalties provided in this section are in addition to penalties already provided in Florida Statutes.

(4) Notwithstanding this section, a county or municipality participating in the anchoring and mooring pilot program may continue to regulate the anchoring or mooring of non-live-aboard vessels as provided under s. 327.4105.

Section 3. Paragraph (y) is added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(y) Section 327.4107, relating to the anchoring of vessels outside public mooring fields, for which the civil penalty upon conviction is:

1. For a first offense, $50.

2. For a second offense, $100.

3. For a third or subsequent offense, $250.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal

infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 4. Subsection (1) of section 327.391, Florida Statutes, is amended to read:

327.391 Airboats regulated.—

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02(28) ~~s. 327.02(25)~~. The use of cutouts or flex pipe as the sole source of muffling is prohibited, except as provided in subsection (4). Any person who violates this subsection commits a noncriminal infraction punishable as provided in s. 327.73(1).

Section 5. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14
Meeting Date

1548
Bill Number (if applicable)

Topic VESSEL SAFETY

Amendment Barcode (if applicable)

Name RANA BROWN

Job Title

Address 104 W JEFFERSON ST
Street
TLH FL 32301
City *State* *Zip*

Phone 850-224-3427

Email RANA@RLBOOKCPA.COM

Speaking: [X] For [ ] Against [ ] Information

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

Representing CONCERNED WATERFRONT HOMEOWNERS ASSOC.

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14-15
Meeting Date

1548
Bill Number (if applicable)

Topic Anchoring

Amendment Barcode (if applicable)

Name Missy Timmins

Job Title

Address 2910 Kerry Forest Pkwy D4-368
Street

TLH FL 32309
City *State* *Zip*

Phone 850-264-3225

Email missy@timminsconsulting.com

Speaking: For ☐ Against ☐ Information

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

Representing Marine Industries Assoc. of FLA / Marine Industries Assoc of Palm Beach

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14-2015
Meeting Date

1548
Bill Number (if applicable)

Topic ANCHORING BAN

Amendment Barcode (if applicable)

Name ERIC Eisele

Job Title PARTNER / RVE ENTERPRISES

Address 11112 SW 75th AVE
Street

Phone 813 781 1909

OCALA FL 34476
City *State* *Zip*

Email e-eisele@yahoo

Speaking: ☐ For ☒ Against ☐ Information

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

Representing TAMPA SAILING SQUADRON / SEASCOUTS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1548
~~SB~~
Bill Number (if applicable)

~~AA~~
Amendment Barcode (if applicable)

Topic _____

Name Kingsley Ross

Job Title Green Cruising Club member

Address 234 Harbour Pt Dr
Street

Crawfordville, FL 32327
City *State* *Zip*

Phone 850-300-7378

Email kingsleyRR@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14-15
Meeting Date

1548
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic ANCHORING BAN

Name JERRY PAUL

Job Title

Address
Street

City *State* *Zip*

Phone 850-386-5267

Email JPAUL@CAPITOLENERGY.NET

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SOUTH SEAS CRUISING ASSOCIATION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14
Meeting Date

1548
Bill Number (if applicable)

Topic Vessel Safety

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title

Address 104 W Jefferson St
Street
TLH FL 32301
City *State* *Zip*

Phone 305 935 1866

Email Kelly@RUBOLPA.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing Concerned Waterfront Homeowners Assoc

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 14 2015
Meeting Date

1548
Bill Number (if applicable)

Topic Archery

Amendment Barcode (if applicable)

Name DAVID CHILDS

Job Title Counsel

Address 119 S. Monroe St. Suite 300
Street

Phone 850 222-7500

Tallahassee FL 32301
City *State* *Zip*

Email DAVIDC@HGSLAW.COM

Speaking: ☐ For ☐ Against ☑ Information

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

Representing National Marine Manufacturers Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1548
Bill Number (if applicable)

Topic VESSEL SAFETY

Amendment Barcode (if applicable)

Name ROBERT BURNS

Job Title

Address 731 DUPARC CIRCLE
Street

Phone 850 765 5530

TALLAHASSEE FL 32312
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1548
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Vessel Safety

Name Ryan Matthews

Job Title Assoc. Dir. Leg. Affairs

Address PO Box 1757
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 222 9684

Email rmatthews@flaher.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

CS SB 1548
Bill Number (if applicable)

Topic VESSEL SAFETY

Amendment Barcode (if applicable)

Name JERRY MCDANIEL

Job Title GOVT CONSULTANT

Address 123 S. ADAMS
Street

Phone 850-566-6068

TLH FL 32302
City *State* *Zip*

Email MCDANIEL@SOSTLATEG.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Miami Bch

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14-15
Meeting Date

1548
Bill Number (if applicable)

Topic Anchoring + Mooring

Amendment Barcode (if applicable)

Name Lauren Jackson

Job Title Associate

Address 205 S Adams St
Street

Phone 931-265-8999

Tallahassee FL 32301
City *State* *Zip*

Email lauren@adamsstadvocates.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CITY OF FORT LAUDERDALE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

[redacted] 1548
Bill Number (if applicable)

Topic [redacted] Vessels Safety

[redacted]
Amendment Barcode (if applicable)

Name Becky DeVillier

Job Title

Address 6525 Bimini Ct
Street

Phone 813 965-1966

Apollo Beach FL 33572
City State Zip

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

[redacted] 1548
Meeting Date *Bill Number (if applicable)*

Topic [redacted] Vessels Safety
Amendment Barcode (if applicable)

Name Sally Marcinek

Job Title

Address 6525 Bimini Ct.
Street

Phone 813 965 1906

Apollo Beach FL 33572
City *State* *Zip*

Email silversail32@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SELS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1548
Bill Number (if applicable)

Topic BOATER'S RIGHTS-ANCHORING-BAN

Amendment Barcode (if applicable)

Name BRIAN DAVIDSON

Job Title ATTORNEY-AT-LAW

Address 200 HARRISON AVE
Street

PANAMA CITY FL 32402
City *State* *Zip*

Phone 850-890-4296

Email bdavidson@perry-young.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA BOATER'S, SSCA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1548
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Derelict Vessels / Anchoring

Name Bonnie Basham

Job Title

Address 133 Oak St, #15
Street

TLH, FL 32301
City *State* *Zip*

Phone 850 933 7277

Email CapitalLiaison@aol.net

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Boat US

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1548
~~7123~~
Bill Number (if applicable)

~~AA 599779~~
Amendment Barcode (if applicable)

Topic At risk vessels.

Name Gordon Jones

Job Title Retired Navy Engineer/State Engineer

Address 431 Tanbark Pl
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 656-9889

Email casey.jones.9@comcast.net

Speaking: ☐ For ☑ Against ☐ Information

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

Representing ~~Trailer Boaters in general~~ (self)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/
Meeting Date

SB 1548
Bill Number (if applicable)

Topic VESSEL SAFETY (ANCHORING) Amendment Barcode (if applicable)

Name PHILIP N. JOHNSON

Job Title Chair, Concerned Cruisers Committee of SSCA

Address 411 Walnut St. #3920 Phone (202) 247-8352
Street

GREEN COVE SPRINGS, FL 32043 Email SailFlipper@Yahoo.Com
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing CCC @ SSCA

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
SB 1548
Meeting Date

SB 1548
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Anchoring

Name Phil Werndli

Job Title Retired

Address 1028 Apollo Beach Blvd #3
Street

Apollo Beach FL 33572
City State Zip

Phone 850 819 8358

Email pwerndli@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1548

4/14/2015
Meeting Date

~~HB~~
Bill Number (if applicable)

[redacted]
Amendment Barcode (if applicable)

Topic BOATERS Rights, ANCHORING BAND

Name MICHAEL BODIN

Job Title CAPTAIN

Address 60 Gulf Blvd
Street

Phone 513-675-5277

INDIAN ROCKS BEACH FL 33785
City *State* *Zip*

Email CAPTMike120@gmail

Speaking: ☐ For ☒ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

1548
~~HB 3~~
Bill Number (if applicable)

~~AM 009979~~
Amendment Barcode (if applicable)

Topic Boater's Rights

Name Jim Neff

Job Title Boat Owner / Captain

Address 9809 N.W. 59th Terr.
Street

Phone 352-262-0730

Gainesville FL 32653
City *State* *Zip*

Email janeff@mac.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

April 14, 2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

1548
Bill Number (if applicable)

Topic Vessel Safety

Amendment Barcode (if applicable)

Name Richard Moore

Job Title Major, Division of Law Enforcement

Address 620 S. Meridian
Street

Phone 488-5600

Tallahassee FL 32399
City *State* *Zip*

Email richard.moore@myfwc.com

Speaking: ☐ For ☐ Against ☑ Information

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

Representing Fish & Wildlife Conservation Commission

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Community Affairs
Ethics and Elections

SENATOR CHARLES S. DEAN, SR.
5th District

April 2, 2015

The Honorable Alan Hays
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays,

I respectfully request you place Committee Substitute for Senate Bill 1548, relating to the Vessel Safety, on your Appropriations Subcommittee on General Government agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Jamie DeLoach, Staff Director

SENATE APPROPRIATIONS
RECEIVED
15 APR -6 AM 11:30
STAFF DIR. _____ STAFF ...

REPLY TO:
☐ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
☐ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
☐ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/SB 7056 (755960)
INTRODUCER:	Appropriations Subcommittee on General Government and Governmental Oversight and Accountability Committee
SUBJECT:	Administrative Procedures
DATE:	April 16, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Peacock	McVaney		**GO Submitted as Committee Bill**
1.	Davis	DeLoach	AGG	**Recommend: Fav/CS**
2.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7056 amends ss. 120.54 and 120.74, F.S., and replaces the biennial summary reporting requirement with an expanded, annual regulatory plan. It requires each agency to determine whether each new law creating or affecting the agency's authority will require new or amended rules. If so, the agency must initiate rulemaking by a specific time. If not, the agency must state concisely why the law may be implemented without additional rulemaking. The regulatory plan also must state each existing law on which the agency will initiate rulemaking in the current fiscal year. The agency head and his or her principal legal advisor must certify that they have reviewed the plan and that the agency conducts a review of its rulemaking authority. The existing 180-day requirement is revised to coincide with the specific publishing requirements.

The bill repeals s. 120.7455, F.S., pertaining to the online survey of regulatory impacts. Additionally, the bill rescinds the suspension of rulemaking authority made under s. 120.745, F.S.

The bill may have an indeterminate, but minimal fiscal impact on state agencies.

The bill has an effective date of July 1, 2015, except as otherwise provided.

II. Present Situation:

Background

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.[1] The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.[2] If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.[3]

Rulemaking authority is delegated by the Legislature[4] authorizing an agency to "adopt, develop, establish, or otherwise create"[5] a rule. Agencies do not have discretion whether to engage in rulemaking.[6] To adopt a rule, an agency must have an express grant of authority to implement a specific law by rulemaking.[7] The grant of rulemaking authority itself need not be detailed.[8] The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[9] A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.[10] Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies, but not the authority to determine what should be the law.[11]

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[1] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1st DCA 1977).
[3] *McDonald v. Dep't of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1st DCA 1977), articulated this principle subsequently cited in numerous cases. See, *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1st DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1st DCA 1977); *Balsam v. Department of Health and Rehabilitative Services*, 452 So.2d 976, 977–978 (Fla. 1st DCA 1984); *Department of Transp. v. Blackhawk Quarry Co.*, 528 So.2d 447, 450 (Fla. 5th DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1st DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5th DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5th DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1st DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1st DCA 2010).
[4] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[5] Section 120.52(17), F.S.
[6] Section 120.54(1)(a), F.S.
[7] Sections 120.52(8) & 120.536(1), F.S.
[8] *Save the Manatee Club, Inc.*, supra at 599.
[9] *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[10] *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).
[11] *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).

In 1996, the Legislature extensively revised[12] agency rulemaking under the Administrative Procedure Act (APA)[13] to require both an express grant of rulemaking authority and a specific law to be implemented by the rule.

Section 120.54(1)(b), F.S., the "180 Day" Requirement

An agency may not delay implementation of a statute pending adoption of specific rules, unless there is an express provision prohibiting application of the statute before implementing rules are adopted.[14] If a law is enacted that requires agency rules for its proper implementation, "such rules shall be drafted and formally proposed as provided in s. 120.54, F.S., within 180 days after the effective date of the act, unless the act provides otherwise."[15] This "180 day requirement" predates the 1996 revisions.[16]

The statute does not require complete adoption of rules within 180 days. An agency may comply with the statute merely by publishing a notice of proposed rule.[17] Proposed rules can be repeatedly, substantially revised based on public input and they may also be withdrawn. Consequently, the 180 day requirement does not ensure prompt rulemaking.

Joint Administrative Procedures Committee Monitoring and Agency Compliance

The Joint Administrative Procedures Committee (JAPC) monitors agency compliance with the 180 day requirement in furtherance of its rulemaking oversight duties.[18] The JAPC staff review legislation enacted each session to identify new or changed laws that appear to require the adoption of new rules or the amendment or repeal of existing rules for proper implementation. Where the law appears to mandate new rulemaking (for example, using terms such as "shall adopt rules," or provides that the agency "shall establish" some standard or "must" make some policy), or restates an existing "mandate" for rulemaking, the JAPC sends a letter reminding the agency of the 180 day requirement. If the text of proposed rules is not published, at least as part of a notice of rule development, within the 180 days, the JAPC will follow with an inquiry as to when the agency will initiate public rulemaking on that issue.

The JAPC has no power to compel the 180 day compliance; however, agencies generally comply with the requirement. In recent years, the JAPC has identified several agencies that had not proposed rules within 180 days of the enactment of laws appearing to mandate new rulemaking. At its meeting of February 18, 2013, the JAPC heard presentations from 13 different agencies on whether rulemaking actually was necessary to implement particular laws and, if so, explanations for the lack of progress. Some members of the committee asked whether these agencies treated the statute as a "suggestion" instead of a mandatory rulemaking requirement. Again, on

[12] Ch. 96-159, L.O.F.
[13] Chapter 120, F.S.
[14] Section 120.54(1)(c), F.S.
[15] Section 120.54(1)(b), F.S.
[16] The 180 requirement was enacted as Ch. 85-104, s. 7, L.O.F.
[17] Section 120.54(3)(a), F.S. This is the common interpretation of the 180 day requirement. An alternative interpretation would be that a notice of rule development published under s. 120.54(2), F.S., including a *preliminary* draft of proposed rules, may be sufficient to comply.
[18] Joint Rule 4.6.

February 2, 2015, the JAPC received a report from its staff reflecting continuing related problems.

"Directive" vs. "Mandate"

Courts generally interpret words in statute such as "shall" or "must" as mandating a particular action where the alternative to the action is a possible deprivation of some right. However, use of such otherwise-mandatory terms where there is no effective consequence for the failure to act renders them *directory*, not compulsory.[19] A person regulated by an agency or having a substantial interest in an agency rule may petition that agency to adopt, amend, or repeal a rule,[20] including where the agency does not act within the 180 day requirement. The APA provides no other process to enforce the 180 day requirement, no legal sanction for failure to comply, nor the authority for any specific entity to compel compliance.

Section 120.74, F.S., Biennial Reporting

1996 Reporting Requirement

As part of the comprehensive revision of rulemaking in 1996, agencies were required to review all rules adopted before October 1, 1996, identify those exceeding the rulemaking authority permitted under the revised APA, and report the results to the JAPC. The JAPC would prepare and submit a combined report of all agency reviews to the President of the Senate and Speaker of the House of Representatives for legislative consideration.[21]

Another 1996 law added a requirement for ongoing rulemaking review, revision, and reporting.[22] Under that law as presently amended, each agency must review its rules every two years and amend or repeal rules as necessary to comply with specific requirements.[23] The agency head must report the results and other required information to the President of the Senate, the Speaker of the House of Representatives, the JAPC, and "each appropriate standing committee of the Legislature" biennially on October 1.[24]

Limited Utility of s. 120.74 Reports

Agencies as defined in the APA,[25] including school districts, comply with the requirements of s. 120.74, F.S., typically by filing summary reports that simply verify the agency performed the required reviews, list rules identified in the review for amendment or repeal, and finding no undue economic impact on small businesses (a required subject of the report). For example, one

[19] *S.R. v. State*, 346 So.2d 1018, 1019 (Fla.1977); *Reid v. Southern Development Co.*, 42 So. 206, 208, 52 Fla. 595, 603 (1906); *Ellsworth v. State*, 89 So.3d 1076, 1079 (Fla. 2d DCA 2012); *Kinder v. State*, 779 So. 2d 512, 514 (Fla. 2d DCA 2000).
[20] Section 120.54(7), F.S. If the agency denies the petition the requesting party may seek judicial review of that decision. Sections 120.52(2) and 120.68, F.S.
[21] Ch. 96-159, s. 9(2), L.O.F.
[22] Ch. 96-399, s. 46, L.O.F., codified as s. 120.74, F.S. In both 2006 and 2008, the Legislature added substantive provisions to this section. Chapter's 2006-82, s. 9, and 2008-179, s. 8, L.O.F.
[23] Identify and correct deficiencies; clarification and simplification; delete rules that are obsolete, unnecessary, or merely repeat statutory language; improve efficiency, reduce paperwork, decrease costs to private sector and government; coordinate rules with agencies having concurrent or overlapping jurisdiction. Section 120.74(1), F.S. (Supp. 1996).
[24] Section 120.74(2), F.S.
[25] Section 120.52(1), F.S.

2009 report from a school district identified the following changes to the student code of conduct:

> The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school. The majority of the recommended changes for 2008-09 are minor revisions in punctuation, spelling, language, or order of paragraphs.[26]

The 2013 report for the same school district states the following as "what & why the policy changed" for the student code of conduct:

> The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school.[27]

A different school district submitted substantially the same reports for 2009 and 2013, commenting only on that district's review and management of forms. That district's reports included no information on whether any rules were identified as requiring revision or repeal due to changes in law.[28]

Reports by state agencies have reflected inconsistent application of the requirement for the report to "specify any changes made to (the agency's) rules as a result of the review…"[29] One agency's 2009 report identified each rule requiring repeal or amendment and new rules required by program changes, including a brief explanation of the reason for the amendment or adoption.[30] A different agency simply identified obsolete rules for repeal (without stating why these were obsolete) and listed a rule for amendment to update documents incorporated by reference (without identifying the documents so referenced.)[31] Some agencies provided lengthy lists of rules identified for amendment or repeal with little explanation other than repeating the terms of the review statute as to the reason for such proposed action.[32]

Educational units are exempt from the biennial reporting requirements.[33]

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[26] School Board of Manatee County, "Section 120.74 Report" (Sept. 29, 2009), received by JAPC on Nov. 3, 2009. On file with Subcommittee staff.
[27] School Board of Manatee County, "Section 120.74 Report" (Sept. 24, 2013), received by the House on Oct. 3, 2013. On file with Subcommittee staff.
[28] School Board of Santa Rosa County, 2009 Report received by JAPC on Sept. 30, 2009, and 2013 Report received by the House on Aug. 26, 2013, both on file with Subcommittee Staff.
[29] Section 120.74(2), F.S.
[30] Dept. of Children and Families, "Biennial rule review report required by section 120.74, Florida Statutes" (Oct. 1, 2009), received by JAPC on Oct. 7, 2009.
[31] Dept. of Agriculture and Consumer Services, "August 20, 2009 Memorandum regarding §120.74, Florida Statutes, Rule Review" (Oct. 1, 2009), received by the JAPC on Oct. 1, 2009.
[32] Dept. of Business & Professional Regulation, "Section 120.74, Florida Statutes Biennial Report to the Legislature" (Oct. 1, 2009), received by JAPC on Oct. 5, 2009; Dept. of Environmental Protection, 2009 Report received by JAPC on Oct. 2, 2009.
[33] Section 2, ch. 2014-39, L.O.F., codified as s. 120.745(5), F.S.

Regulatory Plans

During the 2011 Session, the reporting requirements were amended to require each agency to file an annual regulatory plan in addition to the biennial reports.[34] The regulatory plan identifies those rules the agency intends to adopt, amend, or repeal during the next fiscal year. These reports have not proven any more substantive than the biennial reports described above.

Section 120.745, F.S., Retrospective Economic Review of Rules

In November 2010, the Legislature enacted a new limitation on agency rulemaking: any rule adopted after the date of the act, whether a new or amended rule, that may likely have a significant economic impact, could not go into effect unless first ratified by the Legislature.[35] The law requires an agency to prepare a full Statement of Estimated Regulatory Costs (SERC) if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in the first year after the rule is implemented.[36] Additionally, the SERC must include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of $1 million in the aggregate within five years of going into effect.[37]

The requirements applied only to rules which had not become effective as of November 17, 2010, or were proposed for adoption after that date. Existing rules were not subject to the ratification requirement. In 2011, the Legislature enacted s. 120.745, F.S., to require a retrospective economic analysis of those existing rules. All agencies required to publish their rules in the Florida Administrative Code (F.A.C.)[38] were required to review their rules, identify those potentially having one of the impacts described in s. 120.541(2)(a), F.S., over a five year period, complete a full comprehensive economic review of such rules, and publicly publish the results and certify their compliance with the statute to the JAPC. In 2011, all agencies were to publish the results of their initial reviews and identification of existing rules likely to have the significant economic impacts.[39] At the agency's discretion, the full Compliance Economic Reviews for one portion of these rules (Group 1) were to be published by December 1, 2012; the remaining reviews (Group 2) were to be published by December 1, 2013.[40]

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[34] Ch. 2011-225, s. 4, L.O.F. The bill also suspended reporting in 2011 and 2013 under s. 120.74(1) and (2), F.S., to avoid duplication with the economic reviews and reports under s. 120.745, F.S.

[35] Section 120.541(3), F.S.

[36] Sections 120.54(3)(b)1. & 120.541(1)(b), F.S.

[37] Section 120.541(2)(a), F.S. The three impacts are whether the rule will have 1) an adverse impact on economic growth, private sector job creation or employment, or private sector employment; 2) an adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or 3) an increase in regulatory costs, including transactional costs as defined by s. 120.541(2)(d), F.S.

[38] A provision in the act designed specifically to *de facto* exclude educational units (defined in s. 120.52(6), F.S.) which do not publish their rules in the F.A.C. pursuant to s. 120.55(1)(a)2., F.S. Certain other publication requirements also do not apply to educational units; s. 120.81(1), F.S.

[39] Section 120.745(2), F.S. The statute required each agency to publish the number of its rules implementing or affecting state revenues (revenue rules), requiring submission of information or data by third parties (data collection rules), rules to be repealed, rules to be amended to reduce economic impacts, and those rules that would be reported in Groups 1 or 2.

[40] Section 120.745(5), F.S.

The Governor directed a review of all existing agency rules through the newly-created Office of Fiscal Accountability and Regulatory Reform (OFARR).[41] Because most agencies participated in this review, and many of the elements were similar to the retrospective economic reviews contemplated by the Legislature, the law exempted those agencies participating in the Governor's review from most of the new law's requirements. These "exempt" agencies were required to publish their initial determination of those rules requiring full Compliance Economic Reviews in 2011[42] and all final reviews by December 31, 2013.[43]

All agencies complied with the required retrospective review and publication of reports. Of those agencies not participating in the OFARR review process, only five[44] identified rules requiring Compliance Economic Reviews.[45] Of the 161 Compliance Economic Reviews published by these five agencies in 2012, only 72 reviews showed the subject rule as having a specific impact exceeding $1 million over the five year period from July 1, 2011 to July 1, 2016.

Section 120.7455, F.S., Your Voice Survey

As part of the increased oversight of agency rulemaking enacted in 2011, the Legislature sought public participation and input about the effect of agency rules through use of an online survey. Those wanting to comment on any rule could log in to the survey form,[46] respond to a series of questions intended to identify the particular rule and the context of the comment, and provide as much information as the participant thought necessary. Access to the online form was directed primarily through the website of the Florida House of Representatives and was known as the "Your Voice Survey."

To encourage public participation and obtain as wide a variety of comments as possible during the period July 1, 2011, to July 1, 2014, section 120.7455, F.S.,[47] was enacted to provide certain limited protections from enforcement actions based on any response to the survey. One reporting or providing information solicited by the Legislature in conformity with s. 120.7455, F.S., was immune from any enforcement action or prosecution based on the fact of such reporting (or non-reporting) or using information provided in response to the survey.[48] If a person subject to a penalty in excess of the minimum provided by law or rule proved the enforcement action was in retaliation for providing or withholding any information in response to the survey, the penalty would be limited to the minimum provided for each separate violation.[49]

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[41] Executive Order 11-01, subsequently revised by EO 11-72 and replaced by EO 11-211.
[42] As required by the statute, exempt agencies published the number of identified revenue rules (2,078), data collection rules (3,529), rules to be repealed (1,852), rules to be amended to reduce economic impacts (1,441), and rules requiring Compliance Economic Reviews (3,056). At https://www.myfloridalicense.com/rulereview/Rule-Review-Reports.html (accessed Oct. 22, 2013).
[43] Section 120.745(9), F.S.
[44] Dept. of Agriculture and Consumer Services, Dept. of Citrus, Dept. of Financial Services, Office of Financial Regulation, and Public Service Commission.
[45] As required by the statute, "non-exempt" agencies published the number of identified revenue rules (508), data collection rules (1,169), rules to be repealed (482), rules to be amended to reduce economic impacts (189), and rules requiring Compliance Economic Reviews to be reported in Group 1 (161) and Group 2 (182).
[46] At http://www.surveymonkey.com/s/FloridaRegReformSurvey (accessed Oct. 22, 2013).
[47] Ch. 2011-225, s. 6, L.O.F.
[48] Section 120.7455(3), F.S.
[49] Section 120.7455(4), F.S.

The survey was initiated in October 2011, and received 2,723 responses through October 22, 2013. No response appeared to place the participant in jeopardy of prosecution or administrative enforcement. The survey responses were of limited value. Many voiced support or disapproval for issues outside the scope of the survey, such as federal laws, regulations or policies, unrelated state statutes, or local ordinances. Fewer than 200 directly addressed a particular agency rule and of those no more than 40 provided information about the economic or policy impacts of the rule. Because the limited protection in the statute proved to be unnecessary, no apparent purpose is served by continuing the statute.

III. Effect of Proposed Changes:

Section 1 amends s. 120.54, F.S., to eliminate the current 180 day time period granted to agencies to draft and formally propose rules necessary to implement legislation. The new time frames for agencies to begin rulemaking will be no later than November 1 for the notice of rule development and April 1 for the notice of proposed rule.

Section 2 amends s. 120.74, F.S., to replace the current biennial reports with an annual regulatory plan, establish deadlines for specific actions in the rulemaking process, and suspend agency rulemaking if an agency fails to comply with certain requirements.

Regulatory Plan

The bill requires each agency to submit a regulatory plan by October 1 of each year. The regulatory plan must include:

- A listing of each law enacted or amended during the previous 12 months that modifies the duties and authority of the agency. For each law listed, the agency must determine whether:
  - The agency must adopt rules to implement the law;
  - If rulemaking is necessary to implement the law;
    - Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register (FAR).
    - The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).and
  - If rulemaking is not necessary, the reasons that the law may be implemented without rulemaking.
- A listing of any other laws the agency expects to implement by rulemaking before the following July 1. For each law listed, the agency must state the purpose of the rulemaking.

If the Governor or Attorney General provides a letter to the Joint Administrative Procedures Committee (JAPC) stating that a law affects all or most agencies, the agency may exclude the law from its regulatory plan.

The regulatory plan must also include information relating to any law identified in a previous year's regulatory plan as requiring rulemaking for implementation for which no notice of proposed rule has been published. The plan must include a certification by the agency head and the individual acting as a principal legal advisor to the agency head that those individuals have reviewed the plan and that the agency regularly reviews all of its agency rules to determine whether the rules remain consistent with the agency's rulemaking authority and legal authority.

If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency must identify such law, reference the citation to the applicable notice of rule development in the FAR, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

Publication and Delivery to JAPC

The bill requires the agency to publish by October 1 of each year the annual regulatory plan on the agency website or other state website established for such publication. The agency must electronically provide a copy of the certification signed by the agency head and the agency's primary legal advisor to the JAPC. The agency must publish a notice in the Florida Administrative Register identifying the date of publication of the regulatory plan, including a hyperlink or website address for the regulatory plan.

A board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from the Department of Business and Professional Regulation (DBPR), may coordinate with the DBPR, and a board established under s. 20.43(3)(g), F.S., may coordinate with the Department of Health (DOH), for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required regulatory plan to the JAPC.

The bill also requires that regulatory plans published in accordance with the provisions of this bill and regulatory plans published before July 1, 2014, must be made available to the public online for ten years. This will assist elected officials and the general public in reviewing agency implementation of laws through rulemaking.

DBPR AND DOH Review of Board Plans

By October 15 of each year, the DBPR shall file with the JAPC a certification that the DBPR has reviewed each board's and commission's regulatory plan for each board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from the DBPR. A certification may relate to more than one board or commission.

By October 15 of each year, the DOH shall file with the JAPC a certification that the DOH has reviewed each board's regulatory plan for each board established under s. 20.43(3)(g), F.S. A certification may relate to more than one board.

New Deadline for Rule Development

The bill establishes a new deadline for rule development. Rather than 180 days after the effective date of the legislation, the agency must publish a notice of rule development by November 1 after enactment or by the date the agency identified in the regulatory plan. The agency must then publish a notice of proposed rule by the following April 1. The agency may extend this deadline until the following October 1 if the agency publishes a notice of extension in the FAR. In addition, the agency must include a concise statement in the notice of extension identifying any issues causing the delay in rulemaking. The deadline for the notice of proposed rule can be further extended by the agency in the subsequent regulatory plan.

The bill permits an agency to correct a published regulatory plan at any time for the purpose of extending or concluding the affecting rulemaking proceeding, and such plan is deemed corrected as of the October 1 due date. The agency is required to publish a notice of the date of correction for the affected rulemaking proceeding in the FAR.

Certification

Each time an agency files a notice of rule development, a notice for a deadline extension, or a regulatory plan correction, the agency must file a certification with the JAPC noting the action taken. The certification may apply to more than one notice or contemporaneous act. The date or dates of compliance must be noted in each certificate.

Supplementing the Regulatory Plan

After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the JAPC from the Governor or the Attorney General.

The supplement must include the information required for agency's annual regulatory plan and shall be published on its website or the FAR's website, but no certification or delivery to the JAPC is required. The agency shall publish in the FAR notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of November 1 or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of April 1 or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by filing a notice of proposed rule. If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the agency's next annual regulatory plan.

Failure to Comply

If an agency fails to publish and provide its completed regulatory plan by October 1, or publish a notice of proposed rule by April 1, the agency, within 15 days after written demand from the JAPC or the chair of any other legislative committee, must deliver a written explanation of the reasons for noncompliance. The explanation must be delivered to the JAPC, the President of the Senate, the Speaker of the House of Representatives, and the chair of any legislative committee that requested the explanation.

Educational Units

This section does not apply to educational units, including school districts.

Section 3 repeals s. 120.7455, F.S., relating to an Internet-based public survey of regulatory impacts.

Section 4 rescinds suspension of rulemaking authority under s. 120.745, F.S., effective upon this bill becoming law. This section does not affect any restriction, suspension, or prohibition of rulemaking authority under any other provision of law.

Section 5 provides an effective date of July 1, 2015, except as otherwise provided in the bill and except for this section which shall take effect upon this act becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

PCS/SB 7056 requires agencies to publish additional information in the Florida Administrative Register (FAR), which has an associated cost. Such additional publication requirements will have an indeterminate, but minimal fiscal impact on agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 120.54 and 120.74 of the Florida Statutes.

This bill repeals section 120.7455 of the Florida Statutes.

The bill rescinds the suspension of rulemaking authority under section 120.745 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on General Government on April 14, 2015:
The committee substitute:

- Requires the agency to provide a concise written statement with the notice of extension of rule development identifying any issues that are causing the delayed implementation of the rule.
- Deletes the requirement that the agency regulatory plans be included in the agency legislative budget requests.
- Deletes the suspension or rulemaking authority included in the bill as the penalty for noncompliance.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (1) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(b) Whenever an act of the Legislature is enacted which

requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within the times provided in s. 120.74(4) and (5) ~~180 days after the effective date of the act, unless the act provides otherwise~~.

Section 2. Section 120.74, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 120.74, F.S., for present text.)

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare an implementation and rulemaking plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a

concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also include a listing of each law not otherwise listed pursuant to paragraph (a) which the agency expects to implement by rulemaking before the following July 1, except emergency rulemaking. For each law listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency shall identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency shall identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the presiding officer; and the

individual acting as principal legal advisor to the agency head. The certification must:

1. Verify that the persons executing the certification have reviewed the plan.

2. Verify that the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the certification required in paragraph (1)(d).

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.

(b) To satisfy the requirements of paragraph (a), a board established under s. 20.165(4), and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, may coordinate with the Department of Business and Professional Regulation, and a board established under s. 20.43(3)(g) may coordinate with the Department of Health, for inclusion of the board's or commission's plan and notice of publication in the coordinating

department's plan and notice and for the delivery of the required documentation to the committee.

(c) A regulatory plan prepared under subsection (1) and any regulatory plan published under this chapter before July 1, 2014, shall be maintained at an active website for 10 years after the date of initial publication on the agency's website or another state website.

(3) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each year:

(a) For each board established under s. 20.165(4) and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, the Department of Business and Professional Regulation shall file with the committee a certification that the department has reviewed each board's and commission's regulatory plan. A certification may relate to more than one board or commission.

(b) For each board established under s. 20.43(3)(g), the Department of Health shall file with the committee a certification that the department has reviewed the board's regulatory plan. A certification may relate to more than one board.

(4) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each year, each agency shall publish a notice of rule development under s. 120.54(2) for each law identified in the agency's regulatory plan pursuant to subparagraph (1)(a)1. for which rulemaking is necessary to implement but for which the agency did not report the publication of a notice of rule development under subparagraph (1)(a)2.

(5) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for

which implementing rulemaking is necessary as identified in the agency's plan pursuant to subparagraph (1)(a)1. or subparagraph (1)(c)1., the agency shall publish a notice of proposed rule pursuant to s. 120.54(3)(a) by April 1 of the year following the deadline for the regulatory plan. This deadline may be extended if the agency publishes a notice of extension in the Florida Administrative Register identifying each rulemaking proceeding for which an extension is being noticed by citation to the applicable notice of rule development as published in the Florida Administrative Register. The agency shall include a concise statement in the notice of extension identifying any issues that are causing the delay in rulemaking. An extension shall expire on October 1 after the April 1 deadline, provided that the regulatory plan due on October 1 may further extend the rulemaking proceeding by identification pursuant to subparagraph (1)(c)1. or conclude the rulemaking proceeding by identification pursuant to subparagraph (1)(c)2. A published regulatory plan may be corrected at any time to accomplish the purpose of extending or concluding an affected rulemaking proceeding and is deemed corrected as of the October 1 due date. Upon publication of a correction, the agency shall publish in the Florida Administrative Register a notice of the date of the correction identifying the affected rulemaking proceeding by applicable citation to the Florida Administrative Register.

(6) CERTIFICATIONS.—Each agency shall file a certification with the committee upon compliance with subsection (4) and upon filing a notice under subsection (5) of either a deadline extension or a regulatory plan correction. A certification may relate to more than one notice or contemporaneous act. The date

or dates of compliance shall be noted in each certification.

(7) SUPPLEMENTING THE REGULATORY PLAN.—After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the committee from the Governor or the Attorney General. The supplement must include the information required in paragraph (1)(a) and shall be published as required in subsection (2), but no certification or delivery to the committee is required. The agency shall publish in the Florida Administrative Register notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of the date provided in subsection (4) or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of the date provided in subsection (5) or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by notice as provided in subsection (5). If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the next annual plan pursuant to subsection (1).

(8) FAILURE TO COMPLY.—If an agency fails to comply with a requirement of paragraph (2)(a) or subsection (5), within 15 days after written demand from the committee or from the chair of any other legislative committee, the agency shall deliver a

written explanation of the reasons for noncompliance to the committee, the President of the Senate, the Speaker of the House of Representatives, and the chair of any legislative committee requesting the explanation of the reasons for noncompliance.

(9) EDUCATIONAL UNITS.—This section does not apply to educational units.

Section 3. Section 120.7455, Florida Statutes, is repealed.

Section 4. Effective upon this act becoming a law, any suspension of rulemaking authority under s. 120.745, Florida Statutes is rescinded. This section does not affect any restriction, suspension, or prohibition of rulemaking authority under any other provision of law.

Section 5. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2015.

================ 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 administrative procedures; amending s. 120.54, F.S.; revising the deadline to propose rules implementing new laws; amending s. 120.74, F.S.; revising requirements for the annual review of agency rules; providing procedures for preparing and publishing regulatory plans; specifying requirements for such plans; requiring publication by specified

dates of notices of rule development and of proposed rules necessary to implement new laws; prescribing procedures in the event of noncompliance by an agency; providing for applicability; repealing s. 120.7455, F.S., relating to the legislative survey of regulatory impacts; rescinding the suspension of rulemaking authority made under s. 120.745, F.S.; providing effective dates.

By the Committee on Governmental Oversight and Accountability

585-02716-15 20157056__

A bill to be entitled

An act relating to administrative procedures; amending s. 120.54, F.S.; revising the deadline to propose rules implementing new laws; amending s. 120.74, F.S.; revising requirements for the annual review of agency rules; providing procedures for preparing and publishing regulatory plans; specifying requirements for such plans; requiring publication by specified dates of notices of rule development and of proposed rules necessary to implement new laws; providing for suspension of an agency's rulemaking authority under certain circumstances; providing for applicability; repealing s. 120.7455, F.S., relating to legislative survey of regulatory impacts; providing for rescission of the suspension of rulemaking authority made under s. 120.745, F.S.; providing effective dates.

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

Section 1. Paragraph (b) of subsection (1) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within the times provided in s. 120.74(5) and (6) ~~180 days after the~~

585-02716-15 20157056__

~~effective date of the act, unless the act provides otherwise~~.

Section 2. Section 120.74, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 120.74, F.S., for present text.)

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare an implementation and rulemaking plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also include a listing of each law not otherwise listed pursuant to paragraph (a) which the agency

expects to implement by rulemaking before the following July 1, except emergency rulemaking. For each law listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (8). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency may identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency may identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the chair or equivalent presiding officer; and the agency general counsel, or, if the agency does not have a general counsel, the individual acting as principal legal advisor to the agency head. The certification must:

1. Verify that the persons executing the certification have reviewed the plan.

2. Verify that the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the certification required in paragraph (1)(d).

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.

(b) To satisfy the requirements of paragraph (a), a board established under s. 20.165(4), and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, may coordinate with the Department of Business and Professional Regulation, and a board established under s. 20.43(3)(g) may coordinate with the Department of Health, for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required documentation to the committee.

(c) A regulatory plan prepared under subsection (1) and any regulatory plan published under this chapter before July 1,

2014, shall be maintained at an active website for 10 years after the date of initial publication on the agency's website or another state website.

(3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition to the requirements of s. 216.023 and pursuant to s. 216.351, a copy of the most recent certification executed under paragraph (1)(d), clearly designated as such, shall be included as part of the agency's legislative budget request.

(4) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each year:

(a) For each board established under s. 20.165(4) and any other board or commission receiving administrative support from the Department of Business and Professional Regulation, the Department of Business and Professional Regulation shall file with the committee a certification that the department has reviewed each board's and commission's regulatory plan. A certification may relate to more than one board or commission.

(b) For each board established under s. 20.43(3)(g), the Department of Health shall file with the committee a certification that the department has reviewed the board's regulatory plan. A certification may relate to more than one board.

(5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each year, each agency shall publish a notice of rule development under s. 120.54(2) for each law identified in the agency's regulatory plan pursuant to subparagraph (1)(a)1. for which rulemaking is necessary to implement but for which the agency did not report the publication of a notice of rule development under subparagraph (1)(a)2.

(6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for which implementing rulemaking is necessary as identified in the agency's plan pursuant to subparagraph (1)(a)1. or subparagraph (1)(c)1., the agency shall publish a notice of proposed rule pursuant to s. 120.54(3)(a) by April 1 of the year following the deadline for the regulatory plan. This deadline may be extended if the agency publishes a notice of extension in the Florida Administrative Register identifying each rulemaking proceeding for which an extension is being noticed by citation to the applicable notice of rule development as published in the Florida Administrative Register. An extension shall expire on October 1 after the April 1 deadline, provided that the regulatory plan due on October 1 may further extend the rulemaking proceeding by identification pursuant to subparagraph (1)(c)1. or conclude the rulemaking proceeding by identification pursuant to subparagraph (1)(c)2. A published regulatory plan may be corrected at any time to accomplish the purpose of extending or concluding an affected rulemaking proceeding and is deemed corrected as of the October 1 due date. Upon publication of a correction, the agency shall publish in the Florida Administrative Register a notice of the date of the correction identifying the affected rulemaking proceeding by applicable citation to the Florida Administrative Register.

(7) CERTIFICATIONS.—Each agency shall file a certification with the committee upon compliance with subsection (5), upon filing a notice under subsection (6) of either a deadline extension or a regulatory plan correction, and upon the completion of an act that terminates a suspension under subsection (9). A certification may relate to more than one

notice or contemporaneous act. The date or dates of compliance shall be noted in each certification.

(8) SUPPLEMENTING THE REGULATORY PLAN.—After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the committee from the Governor or the Attorney General. The supplement must include the information required in paragraph (1)(a) and shall be published as required in subsection (2), but no certification or delivery to the committee is required. The agency shall publish in the Florida Administrative Register notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of the date provided in subsection (5) or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of the date provided in subsection (6) or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by notice as provided in subsection (6). If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the next annual plan pursuant to subsection (1).

(9) FAILURE TO COMPLY.—If an agency fails to comply with a requirement of paragraph (2)(a) or subsection (6), the entire rulemaking authority delegated to the agency by the Legislature

under any statute or law shall be suspended automatically as of the due date of the required action and shall remain suspended until the date the agency completes the required act or until the end of the next regular session of the Legislature, whichever occurs first.

(a) During a period of suspension under this subsection, the agency has no authority to file rules for adoption under s. 120.54, but may complete any action required by this section and may conduct public hearings that were noticed before the period of suspension.

(b) A suspension under this subsection does not authorize an agency to adopt or apply a statement defined as a rule under s. 120.52(16) unless the statement was filed for adoption under s. 120.54(3) before the suspension.

(c) A suspension under this subsection tolls the time requirements under s. 120.54 for filing a rule for adoption in a rulemaking proceeding initiated by the agency before the date of the suspension. The time requirements shall resume on the date the suspension ends.

(d) This subsection does not suspend the adoption of emergency rules under s. 120.54(4) or rulemaking necessary to ensure the state's compliance with federal law.

(10) EDUCATIONAL UNITS.—This section does not apply to educational units.

Section 3. Section 120.7455, Florida Statutes, is repealed.

Section 4. Effective upon this act becoming a law, any suspension of rulemaking authority under s. 120.745, Florida Statutes is rescinded. This section does not affect any restriction, suspension, or prohibition of rulemaking authority

under any other provision of law.

Section 5. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2015.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/SB 7076 (123208)
INTRODUCER:	Appropriations Subcommittee on General Government and Military and Veterans Affairs, Space, and Domestic Security Committee
SUBJECT:	Military and Veteran Support
DATE:	April 16, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Ryon	Ryon		**MS Submitted as Committee Bill**
1.	Davis	DeLoach	AGG	**Recommend: Fav/CS**
2.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7076 makes various changes to current law related to military and veteran support. In part, the bill:

- Revises the term "activities" to include, for purposes of the Florida Defense Reinvestment Grant Program, economic development grants provided to businesses in defense-dependent communities;
- Amends Florida's grant programs for defense-dependent communities to clarify that an existing 30 percent match requirement applies only to the Defense Reinvestment Grant Program;
- Requires the Florida Department of Veterans' Affairs (FDVA) to include a section on agricultural farming opportunities for veterans in the Florida Veterans' Benefits Guide (Benefits Guide) and to make the guide available to military installations in Florida;
- Expands the current authorization of local governing bodies to assist honorably discharged veterans who have wartime service, to also include any veteran who has wartime service, regardless of discharge, any veteran who has an honorable discharge, and any veteran who has received a general discharge under honorable conditions;
- Revises the Department of Business and Professional Regulation's (DBPR) general licensure fee waiver program to allow the waiver to apply to a veteran with a general discharge under honorable conditions; and
- Requires the Department of Highway Safety and Motor Vehicles (DHSMV) and Department of Military Affairs (DMA) to create a pilot program to provide on-site commercial driver license testing opportunities available to qualified members of the Florida National Guard.

The bill may have a minimal, indeterminate fiscal impact on state funds; however, most provisions reflect current practice or existing state resources are sufficient.

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

II. Present Situation:

Defense Grant Programs

Section 288.980, F.S., establishes grant programs designed to aid defense-dependent communities throughout the state that are administered by Enterprise Florida, Inc., through the Department of Economic Opportunity (DEO). Among these programs are the Florida Defense Reinvestment Grant Program (DRG) and the Defense Infrastructure Grant Program (DIG).

The DRG program competitively funds projects proposed by defense-dependent communities to develop and implement strategies to help support the missions of a community's military installation or diversify the defense-dependent community's economy. The DRG-funded activities can include studies, presentations, analyses, plans, marketing, modeling, and reasonable travel costs. For Fiscal Year 2014-2015, the Legislature provided an $850,000 recurring appropriation from the State Economic Enhancement and Development Trust Fund to the DEO to fund the DRG program. Twelve DRG projects were approved for Fiscal Year 2014-2015, totaling $850,000.

The DIG program competitively funds local infrastructure projects deemed to have a positive impact on the military value of installations within the state. Authorized DIG projects include, but are not limited to, those relating to encroachment, transportation and access, utilities, communications, housing, environment, and security. For Fiscal Year 2014-2015, the Legislature provided a $1.6 million recurring appropriation from the State Economic Enhancement and Development Trust Fund to the DEO to fund the DIG program. Ten DIG projects were approved for Fiscal Year 2014-2015, totaling $1.6 million.

Section 288.980, F.S., was significantly amended in 2012 to consolidate the seven defense grant programs that existed at that time into three comprehensive programs: the DIG, the DRG, and the Military Base Protection programs.[1] The 2012 revision expressly requires both the DRG and the DIG applicants to agree to match at least 30 percent of any grant awarded. However, this requirement conflicts with the current and historical DIG provision that *allows* the DEO to require a match for certain projects. This permissive match provision for the DIG program was present in the statute prior to the 2012 revision and matches have not been a requirement for past DIG projects. In administering the two programs, the DEO and Enterprise Florida, Inc., require the 30 percent match for DRG projects only. According to Enterprise Florida, Inc., the 30 percent match requirement is appropriate for the DRG program, not the DIG program.

Military Discharges

Florida law defines a "veteran" as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an

[1] Ch. 2012-98, L.O.F.

upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs (VA) on individuals discharged or released with other than honorable discharges. To receive benefits as a wartime veteran, a veteran must have served in a campaign or expedition for which a campaign badge has been authorized, or during certain periods of wartime service.[2]

Federal law defines a "veteran" as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable."[3]

Types of Discharges

There are five types of discharges issued by the military services:[4]

- Honorable Discharge: The servicemember met the conduct and performance standards of the military and is eligible for most veteran benefits including VA education benefits (*i.e.*, GI Bill), military health benefits, military retirement, and military travel benefits.
- General Discharge under Honorable Conditions: The servicemember's service has been honest, faithful and satisfactory. However, this characterization of service is warranted when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military conduct or performance of duty outweigh positive aspects of the record. This discharge means a member is eligible for most veteran benefits but NOT for VA education benefits.
- Other than Honorable Discharge: This discharge is warranted when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of servicemembers. Examples include abuse of authority, serious misconduct that endangers other members of the military, and use of deliberate force to seriously hurt another person. Generally, a servicemember that has this discharge is ineligible for all VA benefits.
- Bad Conduct Discharge: A punitive discharge that's imposed by court-martial (criminal trial conducted by the military). A servicemember is not entitled to any VA benefits.
- Dishonorable Discharge: This discharge is provided when a serious crime has been committed such as desertion, rape, or murder. This discharge is only given if a servicemember is convicted at a general court-martial. The servicemember is not entitled to any VA benefits.

Generally, in order to receive federal VA benefits, the veteran's character of discharge or service must be under other than dishonorable conditions (e.g., honorable and general discharge under honorable conditions). However, individuals receiving undesirable, bad conduct, and other types of dishonorable discharges may qualify for VA benefits depending on a determination made by the VA.[5]

A discharge characterized by the military as under honorable conditions is binding on the VA and allows for the VA to provide benefits if other eligibility requirements are met. If a discharge

[2] Section 1.01(14), F.S.
[3] 38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d).
[4] Congressional Research Service, "Who is a Veteran?" Basic Eligibility for Veterans' Benefits, January 23, 2014, at page 3.
[5] US Department of Veterans Affairs Veterans Benefits Administration, available at: http://www.benefits.va.gov/benefits/character_of_discharge.asp

was not characterized as under honorable conditions, benefits are not payable unless the VA determines the discharge was "under conditions other than dishonorable. Under federal law, certain situations resulting in a discharge under less than honorable conditions constitute a legal bar to the payment of benefits.[6]

A release or discharge for any of the following reasons constitutes a statutory bar to benefits, unless it is determined that the servicemember was insane at the time he/she committed the offense that resulted in the discharge:[7]

- Sentence of a general court-martial;
- Being a conscientious objector;
- Desertion;
- Resignation by an officer for the good of the service;
- Absence without official leave (AWOL) for a continuous period of 180 days or more, without compelling circumstances to warrant such prolonged unauthorized absence (as determined by the VA); or
- Requesting release from service as an alien during a period of hostilities.

Local Governing Bodies Authorized to Assist War Veterans

Current law authorizes the board of county commissioners of each county and the governing body of each city, to aid and assist veterans of the U.S. Armed Forces in presenting claims for, and securing, the following benefits and privileges:

- Compensation;
- Hospitalization;
- Education;
- Loans;
- Career training, and
- Other state or federal benefits or privileges to which they may become entitled.[8]

The law applies to honorably discharged veterans who have who have wartime service and their dependents.

Florida Department of Business and Professional Regulation License Fee Waiver

The DBPR was established in 1993, with the merger of the Department of Business Regulation and the Department of Professional Regulation.[9] The DBPR is responsible for licensing and regulating various businesses and professionals in the state, including but not limited to, cosmetologists, veterinarians, real estate agents and pari-mutuel wagering facilities.[10] Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR. The current statute waives the initial licensing fee, the initial application fee and initial

[6] US Department of Veterans Affairs factsheet on claims for benefits involving other-than-honorable discharges, available at: http://www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf
[7] 38 U.S.C. § 5303.
[8] s. 292.10, F.S
[9] Chapter 93-220, L.O.F.
[10] DBPR website, available at: http://www.myfloridalicense.com/dbpr/index.html

unlicensed activity fee for honorably discharged veterans of the U.S. Armed Forces and their spouses within 60 months prior to applying for licensure.

Agricultural Careers for Veterans

Periodically, Congress establishes agricultural and food policy in a multi-year, omnibus farm bill. The Federal Agricultural Act of 2014[11] (Farm Bill), provides opportunities to veterans to pursue agricultural farming jobs. Among other things, the Farm Bill creates a definition for "veteran farmer or rancher" to mean a farmer or rancher who has served in the Armed Forces and who has not operated a farm or ranch, or has operated a farm or ranch for not more than ten years.[12] The veteran farmer or rancher classification allows veterans to receive additional assistance for agricultural programs, including the following:[13]

- Conservation Reserve Program (CRP) Transition Incentive Program: This program allows retiring farmers with land in the CRP to receive additional payments for leasing or selling the land to a beginning farmer or rancher, a socially disadvantaged farmer or rancher, or a veteran farmer or rancher. The purpose is to make land available to new farmers while ensuring that land coming out of the CRP is farmed or grazed in a sustainable manner.
- Conservation Programming Preference for Veteran Farmers: The United States Department of Agriculture (USDA) is required to set aside a portion of funding for the Environmental Quality Incentives Program (EQIP) and a portion of the acres available for the Conservation Stewardship Program (CSP) for beginning and socially disadvantaged farmers and ranchers. The amount is five percent for beginning farmers and ranchers and five percent for socially disadvantaged farmers and ranchers. Under the Farm Bill, a preference must be given to veteran farmers and ranchers that fall within one of the set-aside categories.
- Value-Added Development Grants: Under this program, private farmers may directly receive grants for their business to assist them in developing business plans and strategies to market value-added products. The USDA must also give a priority to veteran farmers and ranchers.

There are also numerous outreach and advocacy programs under the Farm Bill, including the following:[14]

- Beginning Farmer and Rancher Development Grants: This program administers grants to organizations that provide training, education, outreach, and technical assistance to beginner farmers and ranchers. Under the Farm Bill, assistance for veteran farmers is a priority and five percent of funding is set aside for programs serving veterans.
- Outreach and Assistance Program for Socially Disadvantaged Farmers and Ranchers: This program allows the USDA to provide additional technical assistance to veterans focused on enabling farm ownership and operation as well as outreach to encourage participation in the USDA programs.

[11] Pub. L. No. 113-79, H.R. 2642, 113th Cong
[12] U.S. Department of Agriculture website on "Natural Resources Conservation Service," available at http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/farmbill/?cid=stelprdb1256753
[13] Farmer Veteran Coalition, available at http://www.farmvetco.org/archives/2872,
[14] *Id.*

Commercial Drivers' Licenses

The Federal Motor Carrier Safety Administration (FMCSA), established within the U.S. Department of Transportation, is the federal agency responsible for establishing minimum federal standards that states must meet regarding the issuance of commercial driver licenses (CDL). Administration of the actual CDL program and issuance of the license itself is the exclusive function of the states. To obtain a CDL in Florida, an applicant must pass certain knowledge, endorsement, and skills tests depending on the type of CDL sought.

In 2011, the FMCSA formalized a provision that gives states the authority to substitute two years of commercial motor vehicle safe driving experience in the military for the skills test required upon application for a CDL.[15] In Florida, the CDL skills test waiver is available to military servicemembers (including National Guard members and reservists) and those who are within 90 days of separation from the military. To qualify for the military skills test waiver, the applicant must:[16]

- Pass all required written knowledge exams and endorsements required for the class of CDL sought;
- Certify that for at least two years immediately proceeding the application, the applicant operated a motor vehicle representative of the class of CDL sought; and
- Present the DHSMV Certification for Waiver of Skill Test for Military Personnel form, filled out in its entirety, and signed by the applicant's commanding officer or designee.[17]

The skills test waiver process must be completed, and the CDL issued, within 120 days of separation from the military.

III. Effect of Proposed Changes:

Section 1 amends s. 288.980, F.S., to revise the definition of the term "activities" for the purposes of the Florida Defense Reinvestment Grant Program, to include, but is not limited to, economic development grants provided to businesses in defense-related communities. Additionally, the bill removes the 30 percent match requirement for grants awarded under the Defense Infrastructure Grant Program. The bill clarifies that the 30 percent match requirement applies only to the Defense Reinvestment Grant Program.

Section 2 amends s. 292.10, F.S., to expand the authorization of local governing bodies to assist honorably discharged veterans who have wartime service, to include any veteran who has wartime service, regardless of discharge, any veteran who has an honorable discharge, and any veteran who received a general discharge under honorable conditions.

Section 3 amends s. 455.213, F.S., to revise the DBPR general licensing fee waiver requirement for an honorably discharged veteran, to also require the waiver to apply to a veteran with a general discharge under honorable conditions.

[15] Substitute for Driving Skills Tests for Drivers with Military CMV Experience, 49 CFR s. 383.77 (2011).
[16] Rule 15A-7.018, F.A.C., Military Qualifications for Waiver of Commercial Driver License Skills Test.
[17] DHSMV Certification for Waiver of Skill Test for Military Personnel form. Available at: http://www.flhsmv.gov/html/HSMV71054.pdf

Section 4 requires the FDVA, through the direct-support organization established under s. 292.055, F.S., (The Florida Veterans Foundation), and in consultation with the Department of Agriculture and Consumer Services (DACS), to include a section in the FDVA Benefits Guide on agricultural farming opportunities in the state for veterans. The Benefits Guide must include information on federal, state, and local agricultural farming programs, incentives, assistance, and grants available to veterans.

Additionally, the FDVA must make the Benefits Guide available at all military installations in Florida and provide a concise description of the Benefits Guide's agricultural farming section on the FDVA website including a link to the new section.

Section 5 requires the DHSMV and the DMA to create a pilot program by June 30, 2016, to make commercial driving license testing opportunities available to qualified members of the Florida National Guard. The testing must be held at a Florida National Guard Armory, an Armed Forces Reserve Center, or Camp Blanding Joint Training Center. The pilot program must be accomplished using existing funds appropriated to each department.

Section 6 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/SB 7076 provides the following impacts:
Section 2: A broader group of veterans and their families may be eligible for assistance provided by local governing bodies under the bill.

Section 3: Expanding eligibility for the DBPR general licensing fee waiver may encourage additional applicants to participate in the fee waiver program.

Section 4: Providing information on veteran-specific farming opportunities in the Benefits Guide may encourage veterans to seek career opportunities in the agricultural farming industry.

Section 5: A successful pilot program providing commercial driver license testing opportunities for members of the Florida National Guard may lead to recruiting and training of new commercial motor vehicle drivers.

C. Government Sector Impact:

Section 1: The expansion of the Florida Defense Reinvestment Grant Program includes economic development grants provided to businesses in defense-dependent. While additional business projects may become eligible for grant funding, the program remains subject to an annual appropriation.

Section 3: In administering the licensure fee waiver program for honorably discharged veterans, DBPR's current practice allows veterans with a general discharge under honorable conditions to participate. However, the extent to which veterans with a discharge under this category have knowledge about DBPR's current practice is unknown. The bill codifies the DBPR's current practice[18] and, therefore, has no fiscal impact.

Section 4: The Benefits Guide is an annual publication printed by the Florida Veterans Foundation (Foundation), the FDVA's direct-support organization. The cost to print (approximately $16,000) and distribute the Benefits Guide (currently 100,000 copies) is paid through donations collected by the Foundation.[19] The bill requires that the Benefits Guide contain information on agricultural farming opportunities for veterans. This information will be incorporated into the existing Benefits Guide; therefore there is no fiscal impact to state funds. However, the Benefits Guide has been published and distributed for the 2015 year, and the Foundation will incur an expense if it must print updated Benefits Guides that include the new section on agricultural farming opportunities for veterans.

The requirement for the FDVA to make the Benefits Guide available to all military installations in Florida can be accomplished via e-mail within existing resources.

Section 5: The bill requires the DHSMV to partner with the DMA to jointly create a pilot program to provide on-site commercial driver license testing opportunities to Florida National Guard members. The pilot program may be incorporated into the DHSMV's existing 'Florida Licensing on Wheels' (FLOW) program with minimal fiscal impact. The FLOW program provides a convenient method to renew a driver license, obtain a replacement driver license, change a name or address on a driver license, etc. The DHSMV has five FLOW mobiles that provide services from a large bus and six mini-FLOWs that can be set up at tables at smaller venues and indoor events.[20] The bill

[18] Email from the DBPR, received 4/9/15.
[19] Telephone conversation with FDVA staff April 9, 2015.
[20] DHSMV Florida Licensing on Wheels (FLOW) program. Available at: http://www.flhsmv.gov/offices/FLOW.htm.

requires the DHSMV and the DMA to implement the pilot program within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.980, 292.10, and 455.213.

This bill creates two undesignated sections of Florida law.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on General Government on April 14, 2015:
The committee substitute expands the scope of the Defense Reinvestment Grant Program to provide economic development grants to defense-related businesses.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 28 - 71
and insert:
Section 1. Subsections (3) and (4) of section 288.980, Florida Statutes, are amended to read:
288.980 Military base retention; legislative intent; grants program.—
(3)(a) The department is authorized to award grants on a competitive basis from any funds available to it to support

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activities related to the Florida Defense Reinvestment Grant Program and the Florida Defense Infrastructure Grant Program.

(b) As used in this section, the term "activities" ~~as used in this section~~ means studies, presentations, analyses, plans, and modeling. For the purposes of the Florida Defense Reinvestment Grant Program, the term also includes, but is not limited to, economic development grants provided to businesses in defense-dependent communities. For the purposes of the Florida Defense Infrastructure Grant Program, the term ~~"activities"~~ also includes, but is not limited to, construction, land purchases, and easements. Staff salaries are not considered an "activity" for which grant funds may be awarded. Travel costs and costs incidental thereto incurred by a grant recipient shall be considered an "activity" for which grant funds may be awarded.

(c) The department shall require that an applicant:

1. Represent a local government with a military installation or military installations that could be adversely affected by federal actions.

2. ~~Agree to match at least 30 percent of any grant awarded.~~

~~3.~~ Prepare a coordinated program or plan of action delineating how the eligible project will be administered and accomplished.

3.~~4.~~ Provide documentation describing the potential for changes to the mission of a military installation located in the applicant's community and the potential impacts such changes will have on the applicant's community.

(d) In making grant awards the department shall consider, at a minimum, the following factors:

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1. The relative value of the particular military installation in terms of its importance to the local and state economy relative to other military installations.

2. The potential job displacement within the local community should the mission of the military installation be changed.

3. The potential impact on industries and technologies which service the military installation.

(4) The Florida Defense Reinvestment Grant Program is established to respond to the need for this state to work in conjunction with defense-dependent communities in developing and implementing strategies and approaches that will help communities support the missions of military installations, and in developing and implementing alternative economic diversification strategies to transition from a defense economy to a nondefense economy. Eligible applicants include defense-dependent counties and cities, and local economic development councils located within such communities. The program shall be administered by the department and grant awards may be provided to support community-based activities that:

(a) Protect existing military installations;

(b) Diversify or grow the economy of a defense-dependent community; or

(c) Develop plans for the reuse of closed or realigned military installations, including any plans necessary for infrastructure improvements needed to facilitate reuse and related marketing activities.

Applications for grants under this subsection must include a

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coordinated program of work or plan of action delineating how the eligible project will be administered and accomplished, which must include a plan for ensuring close cooperation between civilian and military authorities in the conduct of the funded activities and a plan for public involvement. An applicant must agree to match at least 30 percent of any grant awarded.

========== 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:

amending s. 288.980, F.S.; revising the definition of the term "activities"; removing the requirement

By the Committee on Military and Veterans Affairs, Space, and Domestic Security

583-03205-15 20157076__

A bill to be entitled

An act relating to military and veteran support; amending s. 288.980, F.S.; removing the requirement that an applicant to the Defense Infrastructure Grant Program provide matching funds of a certain amount; amending s. 292.10, F.S.; revising the categories of veterans eligible to receive assistance from local governing bodies; amending s. 455.213, F.S.; requiring the Department of Business and Professional Regulation to waive initial professional licensing fees for a veteran who has received a general discharge under honorable conditions; requiring the Department of Veterans' Affairs to create, in consultation with the Department of Agriculture and Consumer Services, a section in the Florida Veterans' Benefits Guide on agricultural farming opportunities for veterans; prescribing requirements; requiring the Department of Highway Safety and Motor Vehicles and the Department of Military Affairs to create a pilot program for commercial driver license testing for qualified members of the Florida National Guard by a specified date; requiring that such testing be conducted at certain locations; providing for funding; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) and subsection (4) of section 288.980, Florida Statutes, are amended to read:

583-03205-15 20157076__

288.980 Military base retention; legislative intent; grants program.—

(3)

(c) The department shall require that an applicant:

1. Represent a local government with a military installation or military installations that could be adversely affected by federal actions.

~~2. Agree to match at least 30 percent of any grant awarded.~~

2.~~3.~~ Prepare a coordinated program or plan of action delineating how the eligible project will be administered and accomplished.

3.~~4.~~ Provide documentation describing the potential for changes to the mission of a military installation located in the applicant's community and the potential impacts such changes will have on the applicant's community.

(4) The Florida Defense Reinvestment Grant Program is established to respond to the need for this state to work in conjunction with defense-dependent communities in developing and implementing strategies and approaches that will help communities support the missions of military installations, and in developing and implementing alternative economic diversification strategies to transition from a defense economy to a nondefense economy. Eligible applicants include defense-dependent counties and cities, and local economic development councils located within such communities. The program shall be administered by the department and grant awards may be provided to support community-based activities that:

(a) Protect existing military installations;

(b) Diversify the economy of a defense-dependent community;

or

(c) Develop plans for the reuse of closed or realigned military installations, including any plans necessary for infrastructure improvements needed to facilitate reuse and related marketing activities.

Applications for grants under this subsection must include a coordinated program of work or plan of action delineating how the eligible project will be administered and accomplished, which must include a plan for ensuring close cooperation between civilian and military authorities in the conduct of the funded activities and a plan for public involvement. An applicant must agree to match at least 30 percent of any grant awarded.

Section 2. Section 292.10, Florida Statutes, is amended to read:

292.10 Local governing bodies authorized to assist war veterans; powers.—The board of county commissioners of each county and the governing body of each city in the state are authorized ~~hereby granted full and complete power and authority~~ to aid and assist wherever practical and feasible the veterans, male and female, who have served in the Armed Forces of the United States in any war, ~~and~~ received an honorable discharge, or received a general discharge under honorable conditions from any branch of the military service of the United States, and their dependents, in presenting claims for and securing such compensation, hospitalization, education, loans, career training, and other benefits or privileges to which said veterans, or any of them, are or may become entitled under any federal or state law or regulation by reason of their service in

the Armed Forces of the United States.

Section 3. Subsection (12) of section 455.213, Florida Statutes, is amended to read:

455.213 General licensing provisions.—

(12) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran or his or her spouse at the time of discharge, if he or she applies to the department for a license, in a format prescribed by the department, within 60 months after the veteran is discharged from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged or received a general discharge under honorable conditions.

Section 4. Agricultural farming opportunities for veterans.—

(1) The Department of Veterans' Affairs, through the direct-support organization established under s. 292.055, Florida Statutes, and in consultation with the Department of Agriculture and Consumer Services, shall include a section in the Florida Veterans' Benefits Guide on agricultural farming opportunities in this state for veterans of the Armed Forces of the United States. The section must, at a minimum, include information on:

(a) Federal, state, and local agricultural farming programs, incentives, assistance, and grants that are available to veterans.

(b) Federal and state agricultural farming outreach and advocacy programs that are available to veterans.

(2) The Department of Veterans' Affairs shall:

(a) Make the guides available to all military installations in this state.

(b) Provide a concise description of the contents of the section and a link to the section on its website.

Section 5. No later than June 30, 2016, the Department of Highway Safety and Motor Vehicles and the Department of Military Affairs shall jointly create a pilot program to provide opportunities for commercial driver license testing to qualified members of the Florida National Guard through the commercial driver license skills test waiver available under s. 322.12, Florida Statutes. Testing held pursuant to the pilot program must be conducted at a Florida National Guard armory, an Armed Forces Reserve Center, or the Camp Blanding Joint Training Center. The pilot program must be administered using existing funds appropriated to each department.

Section 6. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

SB 7076
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Col. Mike Prendergast

Job Title Executive Director

Address Suite 2105, the Capitol
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 850-487-1533

Email exdir@fdva.state.fl.us

Speaking: ☑ For ☐ Against ☐ Information

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

Representing The Florida Dept. of Veterans' Affairs

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/SB 7086 (621020)
INTRODUCER:	Appropriations Subcommittee on General Government and Environmental Preservation and Conservation Committee
SUBJECT:	State Lands
DATE:	April 16, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Gudeman	Uchino		**EP Submitted as Committee Bill**
1.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
2.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7086:

- Provides legislative findings regarding the acreage of conservation lands in Florida;
- Defines "low-impact agriculture";
- Includes the preservation of low-impact agriculture as a measureable objective in land management plans;
- Requires updated land management plans to identify conservation lands that could support low-impact agriculture and those lands that are no longer needed for conservation purposes;
- Requires the Division of State Lands (division), within the Department of Environmental Protection (DEP), to review state-owned conservation lands and determine if the lands could support low-impact agriculture or be disposed of;
- Requires the division to submit a list of such lands to the Acquisition and Restoration Council (ARC);
- Requires the ARC to provide recommendations to the division and authorizes the division to direct managing agencies to offer agreements for low-impact agriculture on such lands under certain conditions;
- Specifies the Board of Trustees of the Internal Improvement Trust Fund (BOT) may dispose of such lands under certain conditions;

- Requires the DEP to review certain nonconservation lands every ten years and make recommendations to the BOT whether the lands should be retained by the state or disposed of;
- Allows the water management districts (WMDs) to sell parcels of land valued at $25,000 or less subject to specific noticing requirements;
- Requires the DEP to conduct an inventory of federal and state-owned lands and update the Florida State-Owned Lands and Records Information System (SOLARIS) every five years;
- Requires the DEP to include certain county, municipality, and financially disadvantaged small community lands in SOLARIS;
- Requires counties, municipalities, and financially disadvantaged small communities to submit a list of certain lands to the DEP every five years;
- Requires the DEP to conduct a study and submit a report on the technical and economic feasibility of including certain lands in the SOLARIS database;
- Requires the ARC to give increased priority to certain projects; and
- Requires the DEP to consolidate all individually titled parcels of conservation lands owned by the BOT that are contiguous to other parcels of conservation lands owned by the BOT under a single, unified title and legal description.

This bill has a significant fiscal impact to the Department of Environmental Protection (DEP) (see Section V, Fiscal Impact Statement).

The bill is effective July 1, 2015.

II. Present Situation:

The division is responsible for acquiring and managing state lands as directed by the Board of Trustees of the Internal Improvement Trust Fund (BOT). The division oversees approximately 12 million acres of public lands and 700 freshwater springs. It is also responsible for upland leases for state parks, forests, wildlife management areas, historic sites, educational facilities, vegetable farming, and mineral, oil and gas exploration.[1]

Conservation Land Management Plans

Section 253.034, F.S., specifies that state lands acquired under ch. 259, F.S., must be managed to serve a public interest by protecting and conserving land, air, water, and the state's natural resources. The conservation lands must be managed to provide areas for natural resource based recreation, ensure the survival of plant and animal species, and protect the state's renewable natural resources.

All conservation lands require a land management plan pursuant ss. 253.034(5) and 259.032(1), F.S. The management plans must include the stated use of the lands, the management activities necessary to preserve and protect natural and cultural resources, a management schedule, a cost estimate of management activities, and a determination of public uses and access. The land management plans must also include short- and long-term management goals. The short-term goals must be achievable within a two-year planning period and the long-term goals must be

[1] DEP, *Division of State Lands*, http://www.dep.state.fl.us/lands/statelands_cont.htm (last visited Apr. 6, 2015).

achievable within a ten-year period. The goals must include measurable objectives and be the basis for all future land management activities. The measureable objective are:

- Habitat restoration and improvement;
- Public access and recreational opportunities;
- Hydrological preservation and restoration;
- Sustainable forest management;
- Exotic and invasive species maintenance and control;
- Capital facilities and infrastructure;
- Cultural and historical resources; and
- Imperiled species habitat maintenance, enhancement, restoration, or population restoration.

The law also requires parcels over 160 acres to have a land management plan developed with input from an advisory group. A public hearing must be held prior to the adoption of the management plan.[2]

Acquisition and Restoration Council (ARC)

The ARC is a ten-member council that consists of four members appointed by the Governor, representatives from four state agencies, and one member each appointed by the Florida Fish and Wildlife Conservation Commission and the Commissioner of Agriculture. The ARC is responsible for evaluating, selecting, and ranking state land acquisition projects on the Florida Forever Priority list, and reviewing management plans and land uses for all state-owned conservation lands.

Disposition of State-owned Conservation Lands

Section 253.42, F.S., allows for the exchange of state lands that are vested or titled in the BOT. The BOT may request land of equal conservation value from local governments for the exchange of conservation lands for which no consideration was paid. If consideration was paid for the conservation lands, the exchange must result in an equal or greater conservation benefit to the state.

Pursuant to Article X, section 18 of the Florida Constitution, and ss. 253.42 and 253.034(6)(e), F.S., the BOT, with the ARC's recommendation, must determine if the conservation lands proposed for exchange are no longer needed for conservation purposes. Section 253.034(6), F.S., requires the BOT to make the determination that the exchange will result in a net-positive conservation benefit. Additionally, s. 253.034(15), F.S., requires the BOT to first offer surplus lands proposed for lease, sublease, or sale, to universities, community colleges, and state agencies before they are offered to the general public.

Since 2000, approximately 3,041 conservation acres have been declared surplus and disposed of and approximately 940 acres have been exchanged.[3]

[2] Section 259.032(10), F.S.
[3] DEP, *Senate Bill 7086 Agency Analysis*, 3 (Mar. 23, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

Florida Forever Act

The Florida Forever Program was created in 1999 as the successor program to the Preservation 2000 Program. The Florida Forever Program reinforces the state's commitment to conservation and expands the state's role in protecting its natural resources. The stated goals of the Florida Forever Program are to acquire lands and water areas to preserve natural resources and protect water supply, provide opportunities for agricultural activities on working lands, provide outdoor recreational opportunities, preserve the Everglades, prioritize the land acquisition process based on science-based assessments of the natural resources, and enhance imperiled species management.[4]

Land acquisitions proposed under the Florida Forever Program are developed by the ARC. The ARC adopted rules to evaluate, select, and rank projects eligible for funds according to specific criteria. The ARC gives weight to projects that:

- Are consistent with the goals of the Florida Forever Program;
- Restore or protect developed areas or water resources that are part of an ongoing government project;
- Enhance or facilitate the management of properties already under public ownership;
- Have significant archeological or historic value;
- Have a funding sources through at least the first two years;
- Have the potential to resolve regional water resource issues;
- Are located in an area that is in imminent threat of losing natural attributes or recreational open space, or are in danger of subdivision that would result in multiple ownership;
- Implement a plan developed by an ecosystem management team;
- Are a component of the Everglades restoration effort;
- May be purchased at 80 percent of appraised value;
- May be acquired using alternatives to fee simple; and
- Are a joint acquisition with other public agencies, nonprofit organizations, private entities, and public-private partnerships.[5]

Section 259.105(11), F.S., also requires ARC to give increased priority to projects where the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions.

Sale or Exchange of Water Management District Lands

Section 373.089, F.S., provides the mechanisms and the noticing requirements for Water Management Districts (WMDs) to sell WMD land. The law authorizes land determined to be surplused to be sold at the highest possible price but not less than the appraised value of the land. Before selling any surplused land the WMD must publish the notice of intent to sell the land in a newspaper circulated in the same county as the property for sale. The notice must be published each week for three successive weeks with the first publication occurring no more than 45 days prior to the sale.

[4] Section 259.105, F.S.
[5] Fla. Admin. Code R. 18-24.0021 (2010).

State Lands Database

Section 253.0325, F.S., was created in 1990 to require the Department of Environmental Protection (DEP) to establish a computerized system for state lands records. The DEP contracted with a vendor to create the mainframe-based land record system for documents related to lands where title is vested in the BOT. In 1999, the system was updated to include new technologies and integration components and referred to as the Board of Trustees Land Document System (BTLDS). The law requires the program to include, at a minimum, a document management component, a lands and records management component, an evaluation component, and a mapping component. The DEP is responsible for ensuring the information system is compatible within the DEP and other state, local, and regional government agencies.

In 2008, s. 253.0325, F.S., was amended to require the DEP to include all lands purchased with Preservation 2000 funds and Florida Forever funds.[6] To comply with the requirement, the DEP contracted with an outside vendor to conduct a BTLDS Feasibility Study. The study determined the division would be the clearinghouse for all state lands data and be solely responsible for maintaining the database.

In 2010, s. 216.0153, F.S., directed the DEP to create, administer, operate, and maintain a comprehensive system and automated inventory of all state lands and real property leased, owned, rented, occupied, or maintained by a state agency, judicial branch, or water management district (WMD). In order to meet the requirement, the DEP created the SOLARIS database. The database includes all state-owned lands in which the state has a fee interest, including conservation easements acquired through a formal acquisition process for conservation.

The SOLARIS database has been implemented by the DEP and the Department of Management Services to include a facility information component and land information component. The Facility Information Tracking System includes 332 users and 65 different agencies, and the Lands Information Tracking System includes 140 users and 50 different agencies.[7]

III. Effect of Proposed Changes:

Section 1 amends s. 253.034, F.S., to provide legislative findings that the land area of Florida is approximately 34.7 million acres including 3.2 million acres of conservation lands titled to the Board of Trustees of the Internal Improvement Trust Fund (BOT), of which 1.2 million acres are uplands.

The bill defines "low-impact agriculture" as any agricultural activity that, when occurring on conservation land or on land under a permanent conservation easement:

- Does not cause or contribute to violations of water quality standards as evidenced by water quality monitoring prescribed by the Department of Environmental Protection (DEP) or an applicable Water Management District (WMD);
- Is consistent with an adopted land management plan;
- Does not adversely impact the land's conservation purpose; and

[6] Chapter 2008-229, s. 4, Laws of Fla.
[7] DEP, *State of Florida Lands and Facilities Inventory Search*, http://webapps.dep.state.fl.us/DslPi/splash?Create=new (last visited Apr. 6, 2015).

- Does not adversely limit recreational use.

The bill specifies the preservation of low-impact agriculture on conservation lands must be a measureable objective in establishing short- and long-term management goals.

Land management plans, updated on a rotating basis every ten years, must identify conservation lands that:
- May support low-impact agricultural uses while maintaining the land's conservation purpose; and
- Are no longer needed for conservation purposes and could be disposed of in fee simple or with the state retaining a permanent conservation easement.

The bill requires the division to review all state-owned conservation lands titled to the BOT to determine if the lands could support low-impact agricultural uses while maintaining the land's conservation purpose. The division must submit a list of these identified lands and the lands identified in an updated land management plan to the Acquisition and Restoration Council (ARC). The ARC is required to provide recommendations as to whether the lands could support low-impact agriculture to the division within nine months of receiving the list. The bill authorizes the division to direct managing agencies to offer agreements for low-impact agriculture on the conservation lands. The agreements may not exceed 10 years and may be renewed with division approval. The bill does not prohibit a managing agency from entering into agreements as otherwise provided by law.

The bill renumbers a section of statute that requires the division to review all state-owned conservation lands titled to the BOT to determine if the lands are no longer needed for conservation purposes and could be disposed of in fee simple or with the state retaining a permanent conservation easement. The bill requires the review to include additional lands identified in an updated land management plan. The bill also requires that within nine months of receiving the list, the ARC is required to recommend to the division whether the lands are no longer needed for conservation purposes and could be disposed of in fee simple or if the state should retain a permanent conservation easement. The BOT may dispose of the land by an affirmative vote of at least three BOT members.

The bill also requires division to review all encumbered and unencumbered nonconservation lands titled to the BOT and determine if the lands should remain in public ownership or be disposed of by the BOT. The BOT may dispose of the land by an affirmative vote of three BOT members.

Section 2 creates s. 253.87, F.S., to require the DEP to include in the Florida State-Owned Lands and Records Information System (SOLARIS) database by July 1, 2017:
- All federally owned conservation lands;
- All lands on which the federal government retains a permanent conservation easement; and
- All lands on which the state retains a permanent conservation easement.

The bill requires each county, municipality, and financially disadvantaged small communities as defined in s. 403.1838, F.S., to identify all conservation lands that are owned in fee simple and all lands that are retained in a permanent conservation easement. Counties and municipalities

must submit their lists to the DEP by July 1, 2017, and disadvantaged small communities must submit their lists by July 1, 2018. The DEP must include these properties in the SOLARIS database within six months after receiving the list.

The bill also requires the DEP to conduct a study to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the technical and economic feasibility of including the following lands in the SOLARIS database or a similar public lands inventory:

- All lands on which local comprehensive plans, land use restrictions, zoning ordinances, or land development regulations prohibit the land from being developed or limit the amount of development to one unit per 40 or more acres;
- All publicly and privately owned lands for which development rights have been transferred;
- All privately owned lands under a permanent conservation easement;
- All lands owned by a nonprofit or nongovernmental organization for conservation purposes; and
- All lands that are part of a mitigation bank

Section 3 amends s. 259.105, F.S., to require ARC to give projects increased priority for Florida Forever funding that:

- May be acquired in less than fee ownership, such as a permanent conservation easement;
- Contribute to improving the quality and quantity of surface water and groundwater;
- Contribute to improving the water quality and flow of springs; and
- Contribute to a 20-year strategy for implementation of Article X, section 28 of the Florida Constitution that achieve the goals in s. 259.105(5), F.S.

Section 4 amends s. 373.089, F.S., to allow the WMDs to sell parcels of land valued at $25,000 or less and no longer necessary for conservation purposes. A WMD is required to send notice of the intent to sell to adjacent property owners within 45 days of the sale and post the notice on its website. The WMD's governing board may close the sale of the parcel without receiving bids after 14 days of publication. If two or more adjacent property owners offer to purchase the property, the WMD must accept sealed bids and sell the property to the highest bidder. The WMDs are authorized to restrict the future use of parcels as a term and condition of sale.

Section 5 creates an unnumbered section of law to require the DEP to consolidate all individually titled parcels of conservation lands solely owned by the BOT and are contiguous to other parcels of conservation lands solely owned by the BOT under a single, unified title and legal description.

Section 6 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill requires each county, municipality, and financially disadvantaged small community to submit to DEP a list of all conservation lands owned in fee simple by the entity and lands on which the entity holds a permanent conservation easement. The bill

may require counties and municipalities to take actions requiring the expenditure of funds. As a result, the county and municipality mandates provision of Article VII, Section 18, of the Florida Constitution may apply. A law having an insignificant fiscal impact is exempt from the requirements of Article VII, section 18, of the Florida Constitution. The cost to counties and municipalities to identify and submit the list to the DEP is indeterminate.

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 ability to conduct low-impact agricultural activities on conservation lands that support such activities may provide a positive fiscal impact to the agriculture industry.

C. Government Sector Impact:

The ability for the Water Management Districts (WMDs) to sell parcels of land valued at less than $25,000 will have a positive fiscal impact to the WMDs. The number of parcels that may qualify for this type of sale is unknown; therefore, the potential revenue to the WMDs is indeterminate. The WMDs will also be relieved from managing the small parcels, providing an indeterminate positive fiscal impact.

According to the Department of Environmental Protection (DEP), the additional detailed environmental assessment of state conservation lands every ten years, in addition to the five-year review currently conducted for all conservation land management plans, will cost $184,400. This estimate includes salary and benefits for two additional employees and expenses.[8]

The cost to review encumbered and unencumbered nonconservation lands is unknown; however, the DEP conducted a similar review of state-owned land in 2014 at a cost of $150,000.[9]

The DEP estimates the cost to update the SOLARIS database to be $1,135,784. This cost includes salaries and benefits for two full time employees, recurring and nonrecurring

[8] *Supra* note 3, at 7
[9]. *Supra* note 3, at 7

expenses, and contracted services. The cost to the DEP to conduct a study to determine the economic feasibility of including lands in the SOLARIS database is unknown; however, a similar study cost over $500,000.[10]

The DEP estimates the cost to consolidate the title of the state-owned conservation land, including separate metes and bounds descriptions that encompass all of the contiguous parcels, to be $6,556,998, over the next three fiscal years. ($2,185,666 for each fiscal year). [11] This cost estimate assumes title review of 35,000 documents at ten documents per day and $1,000 per day. The cost estimate also includes 480 Board of Trustees conservation units at a rate of $2,650 per unity of title to process. The DEP estimates seven additional staff, including two attorneys, two surveyors, two Geographic Information System technicians, and one planning manager will be required. The estimate is calculated with the assumption that all of the title reviews will be conducted without legal challenge. Legal challenges could increase these costs dramatically.

The cost to counties and municipalities to identify and submit a list of conservation lands to the DEP is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the preservation of low-impact agriculture to be considered when establishing the short- and long-term measurable objectives in a land management plan. The bill also allows the DEP to direct managing agencies to offer agreements for low-impact agriculture on conservation lands. Sections 259.105(3)(i) and 570.71, F.S., allow the BOT to purchase conservation easements on agricultural lands. Rule 5I-7.001, F.A.C., provides the application procedures, priority ranking, and acquisition procedures to implement these sections. It is not clear how the bill will be implemented in conjunction with current law.

The bill does not expressly provide the DEP with rulemaking authority to implement the criteria for increased priority funding for Florida Forever projects based on the new criteria.

Section 3 of the bill requires the ARC to give increased priority to projects that contribute to the 20-year strategy for the implementation of Article X, section 28 of the Florida Constitution. According to the DEP, there is no 20-year strategy, therefore, it is unclear what is meant by this reference.

According to the DEP, in Section 5 of the bill, it is not clear what "shall consolidate under a single unified title and legal description" means. This may mean the descriptions for all contiguous parcels must be identified and listed separately in a document such as a Unity of Title or a separate metes and bounds description must be created that encompasses all of the parcels

[10] *Supra* note 3, at 8.
[11] *Supra* note 3, at 9.

that were acquired separately. This would necessitate a title amendment each time another parcel is acquired.[12]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 253.034, 259.105, and 373.089.

This bill creates section 253.87 of the Florida Statutes and an undesignated section of Florida Law.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on General Government on April 14, 2015:
The committee substitute requires updated land management plans to identify conservation lands that could support low-impact agriculture and those lands that are no longer needed for conservation purposes. The CS removed an exemption to this requirement for lands managed as a state park or preserve.

B. Amendments:

None.

[12] *Supra* note 3, at 5.

882000

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 176 - 178

and insert:

on a rotating basis. Each updated land management plan must identify conservation lands under the plan, in part or in whole:

872614

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 509 and 510
insert:

Section 6. For the 2015-2016 fiscal year, the sums of $2,238,695 in recurring funds and $1,520,528 in nonrecurring funds from the Internal Improvement Trust Fund are appropriated to the Department of Environmental Protection, and four full-time equivalent positions with associated salary rate of 182,792 are authorized, for staffing and all operating expenses

872614

associated with the environmental assessment of low-impact agriculture and surplus lands pursuant to s. 253.034, Florida Statutes; the inventory of state, federal, and local government conservation lands in the Florida State-Owned Lands and Records Information System (FL-SOLARIS) database, and the study to include additional lands in the FL-SOLARIS database pursuant to s. 253.87, Florida Statutes; and the consolidation of state-owned conservation land titles pursuant to 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 56

and insert:

specified date; providing an appropriation; providing an effective date.

By the Committee on Environmental Preservation and Conservation

592-03761-15 20157086__

A bill to be entitled

An act relating to state lands; amending s. 253.034, F.S.; providing legislative findings; defining the term "low-impact agriculture"; revising measurable objectives for management goals to include the preservation of low-impact agriculture; requiring updated land management plans to identify conservation lands that could support low-impact agriculture and conservation lands that are no longer needed and could be disposed of; requiring the Division of State Lands to review state-owned conservation lands and determine if such lands could support low-impact agriculture or be disposed of; requiring the division to submit a list of such lands to the Acquisition and Restoration Council; requiring the council to provide recommendations to the division and the Board of Trustees of the Internal Improvement Trust Fund; requiring that the division may direct managing agencies to offer agreements for low-impact agriculture on such lands under certain conditions; providing applicability of such agreements; specifying that the board may dispose of such lands under certain conditions; requiring the division to review certain nonconservation lands and make recommendations to the board as to whether such lands should be retained in public ownership or disposed of; creating s. 253.87, F.S.; directing the Department of Environmental Protection to include certain county, municipal, state, and federal lands in the Florida State-Owned

592-03761-15 20157086__

Lands and Records Information System (SOLARIS) database and to update the database at specified intervals; requiring counties, municipalities, and financially disadvantaged small communities to submit a list of certain lands to the department by a specified date and at specified intervals; directing the department to conduct a study and submit a report to the Governor and the Legislature by a specified date on the technical and economic feasibility of including certain lands in the database or a similar public lands inventory; amending s. 259.105, F.S.; deleting obsolete provisions; requiring the council to give increased priority to certain projects when developing proposed rules relating to Florida Forever funding and additions to the Conservation and Recreation Lands list; amending s. 373.089, F.S.; revising the procedures a water management district must follow for publishing notice of intention to sell parcels no longer essential or necessary for conservation purposes and valued below a certain threshold; providing that such parcels may be sold directly to the highest bidder; authorizing districts to include restrictions on future use of such parcels sold; directing the department to consolidate specified parcels of conservation lands under a single, unified title and legal description by a specified date; providing an effective date.

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

Section 1. Subsection (1), paragraphs (b) and (e) of subsection (5), and subsection (6) of section 253.034, Florida Statutes, are amended, and paragraph (e) is added to subsection (2), to read:

253.034 State-owned lands; uses.—

(1)(a) The Legislature finds that the total land area of the state is approximately 34.7 million acres and, as of January 1, 2014, approximately 3.2 million acres of conservation lands are titled in the name of the Board of Trustees of the Internal Improvement Trust Fund. Approximately 1.2 million acres of these conservation lands, which equal approximately 3.4 percent of the total land area of the state, are uplands located above the boundary of jurisdictional wetlands.

(b) All lands acquired pursuant to chapter 259 shall be managed to serve the public interest by protecting and conserving land, air, water, and the state's natural resources, which contribute to the public health, welfare, and economy of the state. These lands shall be managed to provide for areas of natural resource based recreation, and to ensure the survival of plant and animal species and the conservation of finite and renewable natural resources. The state's lands and natural resources shall be managed using a stewardship ethic that assures these resources will be available for the benefit and enjoyment of all people of the state, both present and future. It is the intent of the Legislature that, where feasible and consistent with the goals of protection and conservation of natural resources associated with lands held in the public trust by the Board of Trustees of the Internal Improvement Trust Fund,

public land not designated for single-use purposes pursuant to paragraph (2)(b) be managed for multiple-use purposes. All multiple-use land management strategies shall address public access and enjoyment, resource conservation and protection, ecosystem maintenance and protection, and protection of threatened and endangered species, and the degree to which public-private partnerships or endowments may allow the entity with management responsibility to enhance its ability to manage these lands. The Acquisition and Restoration Council created in s. 259.035 shall recommend rules to the board of trustees, and the board shall adopt rules necessary to carry out the purposes of this section.

(2) As used in this section, the following phrases have the following meanings:

(e) "Low-impact agriculture," as used in this chapter, means any agricultural activity that, when occurring on conservation land or on land under a permanent conservation easement:

1. Does not cause or contribute to violations of water quality standards as evidenced by water quality monitoring prescribed by the department or an applicable water management district;

2. Is consistent with an adopted land management plan;

3. Does not adversely impact the land's conservation purpose; and

4. Does not adversely limit recreational use.

Lands acquired by the state as a gift, through donation, or by any other conveyance for which no consideration was paid, and

which are not managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation under a land management plan approved by the board of trustees are not conservation lands.

(5) Each manager of conservation lands shall submit to the Division of State Lands a land management plan at least every 10 years in a form and manner prescribed by rule by the board and in accordance with the provisions of s. 259.032. Each manager of conservation lands shall also update a land management plan whenever the manager proposes to add new facilities or make substantive land use or management changes that were not addressed in the approved plan, or within 1 year of the addition of significant new lands. Each manager of nonconservation lands shall submit to the Division of State Lands a land use plan at least every 10 years in a form and manner prescribed by rule by the board. The division shall review each plan for compliance with the requirements of this subsection and the requirements of the rules established by the board pursuant to this section. All land use plans, whether for single-use or multiple-use properties, shall include an analysis of the property to determine if any significant natural or cultural resources are located on the property. Such resources include archaeological and historic sites, state and federally listed plant and animal species, and imperiled natural communities and unique natural features. If such resources occur on the property, the manager shall consult with the Division of State Lands and other appropriate agencies to develop management strategies to protect such resources. Land use plans shall also provide for the control of invasive nonnative plants and conservation of soil

and water resources, including a description of how the manager plans to control and prevent soil erosion and soil or water contamination. Land use plans submitted by a manager shall include reference to appropriate statutory authority for such use or uses and shall conform to the appropriate policies and guidelines of the state land management plan. Plans for managed areas larger than 1,000 acres shall contain an analysis of the multiple-use potential of the property, which analysis shall include the potential of the property to generate revenues to enhance the management of the property. Additionally, the plan shall contain an analysis of the potential use of private land managers to facilitate the restoration or management of these lands. In those cases where a newly acquired property has a valid conservation plan that was developed by a soil and conservation district, such plan shall be used to guide management of the property until a formal land use plan is completed.

(b) Short-term and long-term management goals shall include measurable objectives for the following, as appropriate:

1. Habitat restoration and improvement.

2. Public access and recreational opportunities.

3. Hydrological preservation and restoration.

4. Sustainable forest management.

5. Exotic and invasive species maintenance and control.

6. Capital facilities and infrastructure.

7. Cultural and historical resources.

8. Imperiled species habitat maintenance, enhancement, restoration, or population restoration.

9. Preservation of low-impact agriculture.

(e) Land management plans are to be updated every 10 years on a rotating basis. Each updated land management plan must identify conservation lands under the plan, except lands managed as a state park or preserve, in part or in whole,:

1. Which could support low-impact agricultural uses while maintaining the land's conservation purposes; and

2. Which are no longer needed for conservation purposes and could be disposed of in fee simple or with the state retaining a permanent conservation easement.

(6) The board ~~of Trustees of the Internal Improvement Trust Fund~~ shall determine which lands titled to~~, the title to which is vested in~~ the board~~,~~ may be surplused. For conservation lands, the board shall determine whether the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit. For all other lands, the board shall determine whether the lands are no longer needed and may dispose of them by an affirmative vote of at least three members.

(a) For the purposes of this subsection, all lands acquired by the state before July 1, 1999, using proceeds from Preservation 2000 bonds, the Conservation and Recreation Lands Trust Fund, the Water Management Lands Trust Fund, Environmentally Endangered Lands Program, and the Save Our Coast Program and titled to the board which are identified as core parcels or within original project boundaries are deemed to have been acquired for conservation purposes.

(b) For any lands purchased by the state on or after July 1, 1999, before acquisition, the board must determine which parcels must be designated as having been acquired for conservation purposes. Lands acquired for use by the Department of Corrections, the Department of Management Services for use as state offices, the Department of Transportation, except those specifically managed for conservation or recreation purposes, or the State University System or the Florida College System may not be designated as having been purchased for conservation purposes.

(c)1. At least every 10 years, the division shall review all state-owned conservation lands titled to the board to determine whether any such lands could support low-impact agricultural uses while maintaining the land's conservation purposes. After such review, the division shall submit to the council a list of such lands, including any additional lands identified in any updated land management plan pursuant to subparagraph (5)(e)1. Within 9 months after receiving the list, the council shall provide recommendations to the division as to whether any such lands could support low-impact agricultural uses while maintaining the land's conservation purposes. After considering such recommendations, the division may direct managing agencies to offer agreements for low-impact agriculture on lands that it determines could support such agriculture while maintaining the land's conservation purposes. This section does not prohibit a managing agency from entering into agreements as otherwise provided by law. An agreement entered into pursuant to this paragraph may not exceed a term of 10 years. However, an agreement may be renewed with the consent of the division ~~as a~~

~~component of each land management plan or land use plan and in a form and manner prescribed by rule by the board, each manager shall evaluate and indicate to the board those lands that are not being used for the purpose for which they were originally leased~~. ~~For conservation lands, the council shall review and recommend to the board whether such lands should be retained in public ownership or disposed of by the board. For nonconservation lands, the division shall review such lands and recommend to the board whether such lands should be retained in public ownership or disposed of by the board.~~

2. At least every 10 years, the division shall review all state-owned conservation lands titled to the board to determine whether any such lands are no longer needed for conservation purposes and could be disposed of in fee simple or with the state retaining a permanent conservation easement. After such review, the division shall submit a list of such lands, including additional conservation lands identified in an updated land management plan pursuant to subparagraph (5)(e)2., to the council. Within 9 months after receiving the list, the council shall provide recommendations to the board as to whether any such lands are no longer needed for conservation purposes and could be disposed of in fee simple or with the state retaining a permanent conservation easement. After reviewing such list and considering such recommendations, if the board determines by an affirmative vote of at least three members of the board that any such lands are no longer needed for conservation purposes, the board may dispose of the lands in fee simple or with the state retaining a permanent conservation easement.

3. At least every 10 years, the division shall review all

encumbered and unencumbered nonconservation lands titled to the board and recommend to the board whether any such lands should be retained in public ownership or disposed of by the board. The board may dispose of nonconservation lands under this paragraph by a majority vote of the board.

(d) Lands titled to ~~owned by~~ the board which are not actively managed by any state agency or for which a land management plan has not been completed pursuant to subsection (5) must be reviewed by the council or its successor for its recommendation as to whether such lands should be disposed of by the board.

(e) Before any decision by the board to surplus lands, the ~~Acquisition and Restoration~~ council shall review and make recommendations to the board concerning the request for surplusing. The council shall determine whether the request for surplusing is compatible with the resource values of and management objectives for such lands.

(f) In reviewing lands titled to ~~owned by~~ the board, the council shall consider whether such lands would be more appropriately owned or managed by the county or other unit of local government in which the land is located. The council shall recommend to the board whether a sale, lease, or other conveyance to a local government would be in the best interests of the state and local government. ~~The provisions of~~ This paragraph does not ~~in no way~~ limit the provisions of ss. 253.111 and 253.115. Such lands shall be offered to the state, county, or local government for ~~a period of~~ 45 days. Permittable uses for such surplus lands may include public schools; public libraries; fire or law enforcement substations; governmental,

judicial, or recreational centers; and affordable housing meeting the criteria of s. 420.0004(3). County or local government requests for surplus lands shall be expedited throughout the surplusing process. If the county or local government does not elect to purchase such lands in accordance with s. 253.111, any surplusing determination involving other governmental agencies shall be made when the board decides the best public use of the lands. Surplus lands ~~properties~~ in which governmental agencies have not expressed an ~~no~~ interest must ~~then~~ be available for sale on the private market.

(g) The sale price of lands determined to be surplus pursuant to this subsection and s. 253.82 shall be determined by the division, which shall consider an appraisal of the property, or, if the estimated value of the land is $500,000 or less, a comparable sales analysis or a broker's opinion of value. The division may require a second appraisal. The individual or entity that requests to purchase the surplus parcel shall pay all costs associated with determining the property's value, if any.

1. A written valuation of land determined to be surplus pursuant to this subsection and s. 253.82, and related documents used to form the valuation or which pertain to the valuation, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

a. The exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the board.

b. Before expiration of the exemption, the division may disclose confidential and exempt appraisals, valuations, or

valuation information regarding surplus land:

(I) During negotiations for the sale or exchange of the land.

(II) During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land to facilitate closure of such effort or process.

(III) When the passage of time has made the conclusions of value invalid.

(IV) When negotiations or marketing efforts concerning the land are concluded.

2. A unit of government that acquires title to lands pursuant to this paragraph ~~hereunder~~ for less than appraised value may not sell or transfer title to all or any portion of the lands to any private owner for 10 years. Any unit of government seeking to transfer or sell lands pursuant to this paragraph must first allow the board ~~of trustees~~ to reacquire such lands for the price at which the board sold such lands.

(h) Parcels with a market value over $500,000 must be initially offered for sale by competitive bid. The division may use agents, as authorized by s. 253.431, for this process. Any parcels unsuccessfully offered for sale by competitive bid, and parcels with a market value of $500,000 or less, may be sold by any reasonable means, including procuring real estate services, open or exclusive listings, competitive bid, auction, negotiated direct sales, or other appropriate services, to facilitate the sale.

(i) After reviewing the recommendations of the council, the board shall determine whether lands identified for surplus are to be held for other public purposes or are no longer needed.

The board may require an agency to release its interest in such lands. A state agency, county, or local government that has requested the use of a property that was to be declared as surplus must secure the property under lease within 90 days after being notified that it may use such property.

(j) Requests for surplusing may be made by any public or private entity or person. All requests shall be submitted to the lead managing agency for review and recommendation to the council or its successor. Lead managing agencies have 90 days to review such requests and make recommendations. Any surplusing requests that have not been acted upon within the 90-day ~~time~~ period shall be immediately scheduled for hearing at the next regularly scheduled meeting of the council or its successor. Requests for surplusing pursuant to this paragraph are not required to be offered to local or state governments as provided in paragraph (f).

(k) Proceeds from any sale of surplus lands pursuant to this subsection shall be deposited into the fund from which such lands were acquired. However, if the fund from which the lands were originally acquired no longer exists, such proceeds shall be deposited into an appropriate account to be used for land management by the lead managing agency assigned the lands before the lands were declared surplus. Funds received from the sale of surplus nonconservation lands, or lands that were acquired by gift, by donation, or for no consideration, shall be deposited into the Internal Improvement Trust Fund.

(l) Notwithstanding this subsection, such disposition of land may not be made if it would have the effect of causing all or any portion of the interest on any revenue bonds issued to

lose the exclusion from gross income for federal income tax purposes.

(m) The sale of filled, formerly submerged land that does not exceed 5 acres in area is not subject to review by the council or its successor.

(n) The board may adopt rules to administer this section which may include procedures for administering surplus land requests and criteria for when the division may approve requests to surplus nonconservation lands on behalf of the board.

Section 2. Section 253.87, Florida Statutes, is created to read:

253.87 Inventory of state, federal, and local government conservation lands by the Department of Environmental Protection.—

(1) By July 1, 2017, the Department of Environmental Protection shall include in the Florida State-Owned Lands and Records Information System (SOLARIS) database all federally owned conservation lands, all lands on which the federal government retains a permanent conservation easement, and all lands on which the state retains a permanent conservation easement. The department shall update the database at least every 5 years.

(2)(a) By July 1, 2017, for counties and municipalities, and by July 1, 2018, for financially disadvantaged small communities, as defined in s. 403.1838, and at least every 5 years thereafter, respectively, each county, municipality, and financially disadvantaged small community shall identify all conservation lands that it owns in fee simple and all lands on which it retains a permanent conservation easement and submit,

in a manner determined by the department, a list of such lands to the department. Within 6 months after receiving such list, the department shall add such lands to the SOLARIS database.

(3) By January 1, 2017, the department shall conduct a study and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the technical and economic feasibility of including any of the following lands in the SOLARIS database or a similar public lands inventory:

(a) All lands on which local comprehensive plans, land use restrictions, zoning ordinances, or land development regulations prohibit the land from being developed or limit the amount of development to one unit per 40 or more acres.

(b) All publicly and privately owned lands for which development rights have been transferred.

(c) All privately owned lands under a permanent conservation easement.

(d) All lands owned by a nonprofit or nongovernmental organization for conservation purposes.

(e) All lands that are part of a mitigation bank.

Section 3. Present subsections (5) through (21) of section 259.105, Florida Statutes, are redesignated as subsections (4) through (20), respectively, and present subsections (4), (11), and (14) are amended, to read:

259.105 The Florida Forever Act.—

~~(4) Notwithstanding subsection (3) and for the 2014-2015 fiscal year only, the funds appropriated in section 56 of the 2014-2015 General Appropriations Act may be provided to water management districts for land acquisitions, including less-than-~~

~~fee interest, identified by water management districts as being needed for water resource protection or ecosystem restoration. This subsection expires July 1, 2015.~~

(10)~~(11)~~ The Acquisition and Restoration Council shall give increased priority to:

(a) ~~those~~ Projects for which matching funds are available.

(b) ~~and to~~ Project elements previously identified on an acquisition list pursuant to this section that can be acquired at 80 percent or less of appraised value.

(c) Projects that can be acquired in less than fee ownership, such as a permanent conservation easement.

(d) Projects that contribute to improving the quality and quantity of surface water and groundwater.

(e) Projects that contribute to improving the water quality and flow of springs.

(f) Projects that contribute to a 20-year strategy for implementation of s. 28, Art. X of the State Constitution which achieve the goals set forth in subsection (5).

(g) ~~The council shall also give increased priority to those~~ Projects where the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions including:

1.~~(a)~~ Protecting habitat on nonmilitary land for any species found on military land that is designated as threatened or endangered, or is a candidate for such designation under the Endangered Species Act or any Florida statute;

2.~~(b)~~ Protecting areas underlying low-level military air corridors or operating areas; and

3.~~(c)~~ Protecting areas identified as clear zones, accident

potential zones, and air installation compatible use buffer zones delineated by our military partners, and for which federal or other funding is available to assist with the project.

(13)~~(14)~~ An affirmative vote of at least five members of the Acquisition and Restoration Council shall be required in order to place a ~~proposed~~ project submitted pursuant to subsection (6) on the proposed project list developed pursuant to subsection (8). Any member of the council who by family or a business relationship has a connection with any project proposed to be ranked shall declare such interest before ~~prior to~~ voting for a project's inclusion on the list.

Section 4. Subsection (8) is added to section 373.089, Florida Statutes, to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(8) If a parcel of land is no longer essential or necessary for conservation purposes and is valued at $25,000 or less as determined by a certified appraisal obtained within 360 days before any sale, the governing board may sell the lot to an adjacent property owner. Notwithstanding the successive publishing requirements in subsection (3), a water management district must cause a notice of intention to sell to be published no more than 45 days prior to sale, send notice of its intention to sell the parcel to adjacent property owners by certified mail, and post the notice of sale on its website. The governing board may close the sale of the parcel without

receiving bids after 14 days from such publication. If, within 14 days after such publication, two or more owners of adjacent properties notify the water management district of their desire to purchase the parcel, the water management district shall accept sealed bids from such property owners and may sell such parcel to the highest bidder or reject all offers. The water management district may include a restriction on the future use of such parcel as a term and condition of the sale.

Section 5. Consolidating titles to state-owned conservation lands.—As expeditiously as possible, but not later than July 1, 2018, the Department of Environmental Protection shall consolidate under a single, unified title and legal description all individually titled parcels of conservation lands solely owned by the Board of Trustees of the Internal Improvement Trust Fund that are contiguous to other parcels of conservation lands solely owned by the board.

Section 6. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

9/14/15
Meeting Date

7096
Bill Number (if applicable)

882000
Amendment Barcode (if applicable)

Topic STATE LANDS

Name DAVID CULLEN

Job Title

Address 1674 University Pkwy
Street

Sarasota FL 34243
City *State* *Zip*

Phone 941.323.1404

Email culkem@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Ap 14 2015
Meeting Date

7086
Bill Number (if applicable)

[redacted]
Amendment Barcode (if applicable)
882000

Topic STATE LANDS

Name Janet Bowman

Job Title Director of Legislative Policy & Strategies

Address 236 E. 5th Avenue
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850-251-9406

Email Janet_Bowman@tnc.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

amendments 882870 872614

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

4-14-15
Meeting Date

SB 7086
Bill Number (if applicable)

Topic State lands

Amendment Barcode (if applicable)

Name Eric Draper

Job Title

Address 308 N Monroe
Street

Tallahassee, FL 323
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Audubon

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/15
Meeting Date

7086
Bill Number (if applicable)

Topic STATE LANDS

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title

Address 1674 UNIVERSITY PKWY
Street

SARASOTA FL 34243
City *State* *Zip*

Phone 941.323-2404

Email cullen@sierraclub.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-14-15
Meeting Date

SB 7086
Bill Number (if applicable)

Topic State Lands

Amendment Barcode (if applicable)

Name Stephanie Kunkel

Job Title

Address 1143 Albritton Dr
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-320-4208

Email Stef.Kunkel@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Conservancy of Southwest Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110 **Case:** **Type:**
Caption: Senate Appropriations Subcommittee on General Government **Judge:**

Started: 4/14/2015 1:35:46 PM
Ends: 4/14/2015 3:23:09 PM **Length: 01:47:24**

1:35:49 PM Sen. Hays (Chair)
1:36:42 PM S 284
1:36:43 PM Sen. Diaz de la Portilla
1:36:46 PM Am. 918134
1:39:58 PM Sen. Hays
1:40:23 PM Dan Peterson, Director of Property Rights, James Madison Institute (waives in support)
1:40:41 PM Sarah Busk, Associated Industries of Florida (waives in support)
1:40:52 PM Katie Kelly, Florida Chamber (waives in support)
1:41:00 PM Lance Pierce, Assistant Director of State Legislative Affairs, Florida Farm Bureau (waives in support)
1:41:05 PM David Cruz, Assistant General Counsel, Florida League of Cities, Florida League of Cities
1:41:48 PM Gary Hunter, Attorney, Property Rights Coalition (waives in support)
1:42:14 PM S 284 (cont.)
1:42:52 PM S 7056
1:43:11 PM Am. 864482
1:43:23 PM Sen. Ring
1:44:03 PM Sen. Hays
1:44:15 PM S 7056 (cont.)
1:44:54 PM
1:45:20 PM S 1302
1:45:45 PM Sen. Evers
1:46:44 PM Sen. Hays
1:47:48 PM S 914
1:48:16 PM Sen. Richter
1:48:31 PM Sen. Hays
1:48:44 PM Sen. Richter
1:48:55 PM Sen. Hays
1:49:02 PM Sen. Richter
1:49:25 PM Sen. Hays
1:49:27 PM Am. 254474
1:49:34 PM Sen. Richter
1:49:44 PM Sen. Hays
1:49:51 PM Am. 635024
1:50:19 PM Sen. Richter
1:50:24 PM Sen. Hays
1:50:35 PM S 914 (cont.)
1:50:36 PM Sen. Hay
1:51:12 PM S 1468
1:51:31 PM Sen. Richter
1:52:26 PM Sen. Hays
1:52:47 PM Sen. Richter
1:53:25 PM Am. 819680
1:53:35 PM Sen. Hays
1:53:38 PM Am. 335094
1:53:45 PM Sen. Dean
1:54:21 PM Sen. Hays
1:54:33 PM Sen. Braynon
1:54:46 PM Sen. Dean
1:55:11 PM Sen. Braynon
1:55:40 PM Sen. Hays
1:55:51 PM Sen. Richter
1:57:06 PM Sen. Hays
1:57:16 PM Debbie Harrison Rumberger, Legislative Liaison, League of Women Voters of Florida

1:59:18 PM Sen. Hays
1:59:44 PM Am. 559428
1:59:55 PM Sen. Braynon
2:00:21 PM Sen. Hays
2:00:28 PM Am. 195516
2:00:37 PM Sen. Braynon
2:01:22 PM Sen. Hays
2:01:29 PM S 1468 (cont.)
2:02:08 PM John Dickert, Retired Professional Engineer, self
2:03:01 PM Sen. Hays
2:03:24 PM Gale Dickert, Retired Professional Engineer, People of Madison County - Resolution for a Ban
2:08:46 PM Stephanie Kunkel, Conservancy of Southwest Florida
2:10:53 PM Juan Paz, Policy Coordinator, Relative Energy Florida (waives in opposition)
2:11:00 PM Brian Lee, Director of Research and Policy, ReThink Energy Florida
2:11:35 PM Amy Datz, Retired Environmental Scientist, Environmental Caucus of Florida
2:12:53 PM Patricia T. Thome, Member, Florida Caucus (waives in opposition)
2:13:09 PM David Cullen, Sierra Club Florida
2:14:48 PM Sen. Braynon
2:15:08 PM D. Cullen
2:15:53 PM Mary-Lynn Cullen, Legislative Liaison, Advocacy Institute for Children
2:18:01 PM Barbara Donaldson, Retired, Environmental Caucus (waives in opposition)
2:18:10 PM Ron Saff, Physician, Physician for Social Responsibility
2:19:13 PM Sen. Hays
2:19:29 PM R. Staff
2:20:00 PM Sen. Hays
2:20:10 PM R. Staff
2:21:13 PM Ray Bhondav, Attorney (waives in opposition)
2:21:34 PM Ray Newman, CPA, self (waives in opposition)
2:21:40 PM Gail Marie Perry, Chair, Communication Workers of America (waives in opposition)
2:25:58 PM Sen. Richter
2:26:53 PM Sen. Hays
2:26:58 PM Paula Cobb, Deputy Secretary of Regulatory Programs, Department of Environment Protection
2:29:22 PM Sen. Margolis
2:29:46 PM P. Cobb
2:30:27 PM Sen. Braynon
2:30:32 PM P. Cobb
2:30:36 PM Sen. Braynon
2:30:48 PM P. Cobb
2:32:04 PM Sen. Braynon
2:32:15 PM P. Cobb
2:32:26 PM Sen. Braynon
2:32:41 PM P. Cobb
2:32:47 PM Sen. Braynon
2:32:58 PM P. Cobb
2:32:59 PM Sen. Hays
2:33:08 PM Sen. Margolis
2:33:17 PM P. Cobb
2:33:29 PM Sen. Margolis
2:33:35 PM P. Cobb
2:34:00 PM Sen. Margolis
2:34:22 PM P. Cobb
2:34:30 PM Sen. Margolis
2:34:37 PM Sen. Hays
2:34:56 PM P. Cobb
2:35:09 PM Sen. Hays
2:35:15 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida
2:35:48 PM Sen. Hays
2:35:52 PM Eric Hamilton, Associate Director, Florida Petroleum Council (waives in support)
2:36:06 PM Sen. Hays
2:36:10 PM Sen. Braynon
2:37:48 PM Sen. Margolis
2:39:04 PM Sen. Braynon

2:39:59 PM Sen. Hays
2:40:04 PM Sen. Richter
2:42:09 PM Sen. Hays
2:42:39 PM S 714
2:42:51 PM Anne Bell, Aide of Senator Grimsley
2:43:27 PM Sen. Hays
2:43:30 PM Am. 261900
2:43:38 PM A. Bell
2:44:04 PM Sen. Hays
2:44:09 PM Janet Bowman, Director of Legislative Policy and Strategies, The Nature Conservancy
2:45:00 PM Frank Bernardino, Watersmart Technologies (waives in support)
2:45:03 PM Rana Brown, Republic Services (waives in support)
2:45:08 PM Sen. Hays
2:45:18 PM S 714 (cont.)
2:45:29 PM Phil Leary, Lobbyist, Florida Ground Water Association (waives in support)
2:45:35 PM Lance Pierce, Assistant Director of State Legislative Affairs, Florida Farm Bureau (waives in support)
2:45:40 PM Kenya Corey, Lobbyist, National Waste and Recycling Association - Florida Chapter (waives in support)
2:46:20 PM Sen. Hays
2:46:23 PM S 1352
2:46:33 PM Sen. Smith
2:46:55 PM Sen. Hays
2:48:03 PM
2:48:07 PM Sen. Smith
2:48:29 PM
2:48:34 PM Sen. Hays
2:48:39 PM Sen. Smith
2:48:54 PM Sen. Hays
2:48:58 PM Chris Doolin, Consultant, Small County Coalition (waives in opposition)
2:49:08 PM Sen. Hays
2:49:39 PM Sen. Braynon
2:49:52 PM S 1538
2:50:00 PM Sen. Simpson
2:51:05 PM Sen. Hays
2:51:11 PM Am. 206856
2:51:15 PM Sen. Simpson
2:51:30 PM Sen. Hays
2:51:46 PM Am. 635746
2:51:59 PM Sen. Simpson
2:52:14 PM Sen. Hays
2:52:44 PM S 1538 (cont.)
2:52:50 PM David Rogers, President, Florida National Gas Association (waives in support)
2:53:00 PM Bob Ledou, Senior Vice President, Florida Railroad Association (waives in support)
2:53:17 PM Sen. Hays
2:53:47 PM S 1548
2:54:01 PM Sen. Dean
2:54:36 PM Sen. Hays
2:54:43 PM Am. 964588
2:54:56 PM Sen. Dean
2:55:10 PM Sen. Hays
2:55:29 PM Am. 554434
2:55:38 PM Sen. Dean
2:55:40 PM Sen. Hays
2:55:51 PM S 1548 (cont.)
2:56:19 PM Rana Brown, Concerned Waterfront Homeowners Association (waives in support)
2:56:25 PM Missy Timmins, Marine Industries Association of Florida and Palm Beach (waives in support)
2:56:34 PM Eric Eisele, Partner and RVE Enterprises, Tampa Sailing Squadron and Sea Scouts
2:59:00 PM Sen. Lee
2:59:33 PM E. Eisele
3:00:48 PM Sen. Lee
3:02:09 PM E. Eisele
3:03:18 PM Sen. Dean
3:04:35 PM Sen. Hays

3:05:17 PM Sen. Dean
3:05:33 PM Sen. Hays
3:05:50 PM Sen. Margolis
3:06:18 PM Sen. Hays
3:06:38 PM Richard Moore, Major and Division of Law Enforcement, Fish and Wildlife Conservation Commission
3:07:10 PM Sen. Margolis
3:07:32 PM Sen. Hays
3:08:03 PM Kingsley Ross, Greson Cruising Club Member
3:10:46 PM Sen. Hays
3:11:02 PM S 7076
3:11:07 PM Sen. Gibson
3:12:44 PM Am. 735994
3:12:56 PM Sen. Simpson
3:13:18 PM S 7076 (cont.)
3:13:25 PM Florida Department of Veteran Affairs (waives in support)
3:13:37 PM Sen. Hays
3:14:05 PM S 7086
3:14:12 PM Sen. Dean
3:15:08 PM Sen. Hays
3:15:13 PM Am. 872614
3:15:15 PM Am. 882000
3:15:22 PM Sen. Braynon (Chair)
3:15:26 PM Sen. Hays
3:15:55 PM Sen. Braynon
3:16:04 PM David Cullen
3:16:07 PM Janet Bowman, Director of Legislative Policy and Strategies, The Nature Conservancy
3:16:40 PM Eric Draper, Audobon
3:17:50 PM Sen. Braynon
3:18:04 PM Sen. Hays (Chair)
3:18:09 PM S 7086 (cont.)
3:18:15 PM Stephanie Kunkel, Conservancy of Southwest Florida
3:18:33 PM David Cullen, Sierra Club Florida (waives in support)
3:18:40 PM Sen. Hays
3:19:20 PM S 1548
3:19:28 PM Sen. Simpson
3:19:43 PM Sen. Hays
3:20:07 PM Jim Neff, Boat Owner and Captain (waives in opposition)
3:20:13 PM Michael Bodin, Captain (waives in opposition)
3:20:17 PM Phil Weindl, Retired (waives in opposition)
3:20:24 PM Philip N. Johnson, Chair, Concerned Croisers Committee of SSCA (waives in opposition)
3:20:31 PM Gordon Jones, Retired Navy Engineer and State Engineer (waives in opposition)
3:20:36 PM Bonnie Basham, Boat US (waives in opposition and support)
3:20:51 PM Brian Davidson, Attorney, Florida Boaters of SSCA (waives in opposition)
3:20:59 PM Sally Marcinek, self (waives in opposition)
3:21:03 PM Becky DeVilliea (waives in opposition)
3:21:17 PM Lauren Jackson, Associate, City of Fort Lauderdale (waives in support)
3:21:24 PM Jerry McDaniels, Government Consultant, City of Miami Beach (waives in support)
3:21:29 PM Ryan Matthews, Associate Director of Legislative Affairs, Florida League of Cities (waives in support)
3:21:34 PM Robert Burns, self
3:21:40 PM David Childs
3:21:45 PM Kelly Mallette, Concerned Waterfront Homeowners Association (waives in support)
3:21:49 PM Jerry Paul, South Seas Cruising Association (waives in support)
3:22:08 PM Sen. Hays
3:22:10 PM Sen. Dean
3:22:45 PM Sen. Hays

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN
16th District

April 9, 2015

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

Dear Chairman Hays:

I respectfully request an excused absence for the Appropriations Subcommittee on General Government meeting on Tuesday, April 14, 2015 at 1:30 pm. Please contact me or my Legislative Assistants Rick Kendust or Devon West if you have any questions.

Thank you for your consideration.

Sincerely,

Thad Altman

Cc: Jamie DeLoach, Staff Director, 201 The Capitol
Lisa Waddell, Administrative Assistant, 201 The Capitol

TA/rk

REPLY TO:
☐ 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
☐ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore