

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1197 Department of Agriculture and Consumer Services
SPONSOR(S): Policy & Budget Council and Nelson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1952

DIRECTOR	REFERENCE	ACTION	ANALYST	STAFF
	1) <u>Committee on Agribusiness</u>	<u>7 Y, 0 N</u>	<u>Kaiser</u>	<u>Reese</u>
	2) <u>Environment & Natural Resources Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Kaiser</u>	<u>Hamby</u>
	3) <u>Policy & Budget Council</u>	<u>21 Y, 1 N, As CS</u>	<u>Davila</u>	<u>Hansen</u>
	4) _____	_____	_____	_____
	5) _____	_____	_____	_____

SUMMARY ANALYSIS

CS/CS/HB 1197 revises provisions under the jurisdiction of the Department of Agriculture and Consumer Services (department).

Effective January 1, 2008, the bill requires persons applying for a private investigator license to pass an examination relating to private investigative, private security and repossession services. Additionally, effective September 1, 2008, those persons applying for a private investigator intern license are required to complete 24 hours of training prior to application for licensure. An additional 16 hours of training and an examination must be completed within 180 days. The department is authorized to establish the content of the course work and examination, as well as the manner of its administration and cost, which may not exceed \$100. The bill provides for certain exemptions to the examination requirements. The bill provides for the course work for persons applying for recovery agent or recovery agent intern licensure to be offered through Internet-based training and correspondence training as well as face-to-face training. The department is given spending authority from the Licensing Trust Fund in the amount of \$58,559 for the purpose of developing curriculum and administering examinations to applicants for licensure as private investigators.

The bill revises the name of the organization providing the department with standards, definitions and test procedures for the formulation of antifreeze to ASTM International.

CS/CS/HB 1197 amends the registration process to allow non-owners of brake fluid brand names to register said products with the department when the registration is accompanied by a notarized affidavit signed by the owner of the brand name. Additionally, the bill revises the amount of brake fluid required to be submitted for sampling as well as the labeling requirements, and revises requirements that constitute a new brake fluid product.

The bill clarifies that liquefied petroleum (LP) gas company applicants must supply satisfactory evidence that the premium has been paid on a primary policy of bodily injury liability and property damage liability insurance covering the products and operations of said business. The bill amends current law to include removing liquefied petroleum gas from any container as a prohibited act unless performed by the owner or a person authorized by the owner. The bill requires test measures of volumes of more than 500 gallons of petroleum to be calibrated to the National Institute of Standards and Technology standards within 3 years of the date of adjustment rather than every year.

The bill creates a Consumer Fertilizer Task Force within the Department of Agriculture and Consumer Services to take public input and testimony towards the development of statewide guidelines governing non-agricultural fertilizer use rates and applications.

The bill appears to have a positive fiscal impact on state government.

The effective date of this legislation is July 1, 2007.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires individuals seeking licensure as a private investigator or private investigator intern to pass an examination demonstrating knowledge of ch. 493, F.S., relating to private investigative, private security and repossession services. Additionally, private investigator interns are required to complete 40 hours of course work relating to ch. 493, F.S., prior to the examination.

Ensure lower taxes: Those individuals seeking licensure as a private investigator or private investigator intern will be assessed a fee for the required examination and/or course work.

B. EFFECT OF PROPOSED CHANGES:

Private Investigative, Private Security and repossession Services

Under current law, an applicant applying for a license as a private investigator (Class "C" licensee) meets the experience requirement if he/she can verify at least two years of investigative experience. This experience may include work in law enforcement, insurance, corporate, housing, etc. However, there is no requirement that applicants display any knowledge of Chapter 493, F.S., which regulates private investigators in Florida.

Effective January 1, 2008, applicants for a Class "MA," Class "M," or Class "C"¹ license will be required to pass an examination covering the provisions of Chapter 493, F.S., relating to private investigative, private security and repossession services. The examination must be administered by the Department of Agriculture and Consumer Services (department) or its designee, and the administrator of the examination must verify the identity of each applicant taking the exam. The department has the authority to establish the content of the examination, as well as the manner of its administration and cost, which may not exceed \$100. Prior to application, persons seeking licenses, as listed above, must provide proof of completion of the examination. The examination requirement does not apply to persons holding valid Class "CC," Class "C," Class "MA," or Class "M" licenses. Persons applying for relicensure, whose license has been invalid for more than 1 year, must take and pass the examination.

Private investigator interns (Class "CC" licensee) are not required to have any formal investigative training. Generally, they are trained by their employers, who are licensed private investigators. The intern period is set at two years with no definitive training guide, curriculum or verifiable standards. Thus, in the absence of standardized entry-level training, many interns are being licensed as private investigators without sufficient training in basic investigative techniques.

Effective September 1, 2008, applicants for a Class "CC" license must have completed at least 24 hours of a 40-hour course pertaining to general investigative techniques and Chapter 493, F.S., relating to private investigative, private security and repossession services, and pass an examination. The course work must be offered by a state university or by a school, community college, college, or university that falls under the purview of the Department of Education. The remaining 16 hours of course work and an examination must be passed within 180 days. Individuals failing to provide documentation of the completed course work within the specified timeframe will automatically have his/her license suspended until such time as proof of completion is provided to the department. The course work may be provided by face-to-face presentation, on-line technology, or a home study course in accordance with standards established by the Department of Education. Upon successful

¹ Class "MA": manager for a private investigate agency or branch office; Class "M": manager for a private investigative agency or security agency branch office; Class "C": private investigator, as defined under chapter 493, F.S.

completion of each part of the required course work, a certificate of completion will be issued to the applicant by the facility providing the training. The department has the authority to establish the content of the course work and the examination. The department is given spending authority from the Licensing Trust Fund for monies to develop curriculum and administer the examinations. Persons applying for relicensure, whose license has been invalid for more than 1 year, must complete any required training and examination.

Currently, recovery agents (Class "E") and recovery agent interns (Class "EE") must pass a 40-hour training course to gain licensure. Florida law requires this training to be "face-to-face." In 2006, approximately 275 recovery agents/interns completed the training. With such a small field of applicants, many public institutions cannot afford to offer the training. Currently, there are only seven schools statewide that offer course work for this program. The bill provides for the course work to be offered through Internet-based training and correspondence training as well, to allow greater flexibility for individuals seeking licensure as recovery agents/interns.

Brake Fluid

Current Florida statute² requires an applicant for the registration of a brand of brake fluid to state that he/she owns said brand name of brake fluid. Many applicants applying for registration do not own the brand name being registered and, frequently, the owners of the brake fluid brands contract with other businesses to perform various functions regarding the distribution of their products, including registration. Therefore, these companies cannot state that they own the brand name they are registering. The bill amends the registration process to allow for non-owners of brake fluid brand names to register said products with the department. The bill requires the non-owner to submit a notarized affidavit signed by the owner of the brand name when applying for registration. The affidavit must include all affected brand names, the owner's company or corporate name and address, the applicant's company or corporate name and address, and a statement from the owner authorizing the applicant to register the product with the department. The owner of the brand name will continue to maintain control over products sold under said brand names in the state.

The department currently requires all applicants, both new and renewals, for brake fluid registration to submit a sample (64 fluid ounces) of brake fluid, with an affixed label, to be tested by an independent laboratory. The report from the laboratory is then submitted to the department along with the application for registration. This report provides a complete list of the chemical and physical properties of the formula being registered. Brake fluid product registration can only be renewed if there has been no change to the brand name, formula or composition; therefore, the results from an independent laboratory testing previously submitted are still valid upon renewal. The bill amends current statute to require the independent laboratory testing report only when a new brake fluid brand is being registered. Additionally, the bill amends the amount of the sample to be tested from 64 to 24 fluid ounces, thus reducing the volume of chemical waste to be disposed of by the department. The bill also requires the label to accompany the sample rather than be affixed to the sample.

Liquefied Petroleum Gas

Liquefied petroleum (LP) gas companies must provide proof of insurance coverage or a surety bond to conduct business in the state. Current statutory language focuses mainly on the bond requirements and fails to clarify the insurance requirements. The bill clarifies that LP gas company applicants must supply satisfactory evidence that the premium has been paid on a primary policy of bodily injury liability and property damage liability insurance covering the products and operations of the business. The policy must be issued by an insurer authorized to do business in the state. Proof of insurance may be in the form of an insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage. The department may require new proof of insurance for policies that have been canceled or otherwise terminated.

² s. 526.51(1)(a), F.S.

Current statutory language³ prohibits anyone, other than the owner and those authorized by the owner, from selling, filling, refilling, delivering, or using any propane container for any other product or purpose. The bill amends the statute to include removing gas from any container as one of the prohibited acts. Removing propane from a container, other than through normal use, is a more involved process than simply filling a container. The removal process results in escaping gas vapor requiring additional safety measures to be taken to prevent ignition of the escaped vapor.

Consumer Fertilizer Task Force

Recently, several municipalities and counties have enacted rules/regulations dealing with fertilizers. In each case, the rules/regulations vary from county to county and municipality to municipality, making it difficult for the various industry groups to ensure compliance. Additionally, some of the rules/regulations are not based on sound agronomic science thereby jeopardizing the safety of the environment as well as the water supply.

The bill creates the Consumer Fertilizer Task Force (task force) within the Department of Agriculture and Consumer Services (department). The task force is charged with:

- assessing existing data and information regarding nutrient enrichment and surface waters due to fertilizer;
- assessing management strategies for reducing water quality impacts associated with fertilizer;
- identifying additional research needs;
- developing statewide guidelines governing non-agricultural fertilizer use rates, formulations, and applications with attention to the geographic regions identified in Rule 5-E-1.003, Florida Administrative Code;
- taking public input and testimony concerning these issues;
- recommending methods to ensure local ordinances are based on best available data and science;
- achieving uniformity among local government ordinances where possible, unless local ordinance variations are necessary to meet mandated state and federal water quality standards; and
- developing model ordinances for municipalities and counties concerning the use of non-agricultural fertilizer.

The task force will consist of thirteen members who are technically qualified by training, education or experience in water quality, horticultural, or agronomic science. The members must be appointed by the President of the Senate, the Speaker of the House of Representatives, the Commissioner of Agriculture, the Florida League of Cities, Inc., and the Florida Association of Counties.

Representation on the task force will include the Department of Environmental Protection, the environmental community, the Florida Senate, the Florida House of Representatives, water management districts, the University of Florida's Institute for Food and Agricultural Science, the Department of Agriculture and Consumer Services, the Office of Agricultural Water Policy, the national fertilizer industry, the Florida-based fertilizer industry, registered landscape architects, municipal government, and county government. Members will choose a chair and vice chair from the membership of the task force. The department shall provide staffing for the task force.

The task force is charged with providing a report of the findings and recommendations, including recommendations for statutory changes, if any, to the President of the Senate and the Speaker of the House of Representatives by January 15, 2008, at which time the task force will be dissolved.

The bill provides that from May 1, 2007 through May 2, 2008, no municipality, county or other governmental subdivision will promulgate any fertilizer rule, ordinance, or regulation pending the transmittal of the task force report. This moratorium does not apply if the rule, ordinance or regulation is promulgated in an effort to seek compliance with water quality standards.

³ s. 527.07, F.S.

Other Issues

Current law ⁴ requires all persons and service agencies adjusting the accuracy of petroleum measuring devices to have their test measures calibrated to National Institute of Standards and Technology (NIST) standards within 1 year from the date of the adjustment. As a rule, test measures of 500 gallon capacity and larger are immobile or when moved, are not moved over long distances, which can affect accuracy. The bill requires test measures of volumes of more than 500 gallons to be calibrated to the NIST standards within 3 years of the date of adjustment rather than every year, thus reducing inaccurate measurements.

The bill amends current statute⁵ to reflect the name change of the American Society for Testing and Materials to ASTM International.

C. SECTION DIRECTORY:

Section 1: Amends s. 493.6203, F.S.; requiring applicants for certain classes of license to pass an examination administered by the Department of Agriculture and Consumer Services (department) or by a provider approved by the department; revising requirements regarding submission of application for licensure; requiring the administrator of the examination to verify the identity of the applicant taking the exam; providing the department the authority to establish criteria and the manner of administration of the examination; requiring applicants for a Class "CC" license to complete a portion of the course work related to ch. 493, F.S., and to pass an examination relating to said course work; requiring the remainder of the course work and the examination, and the documentation thereof, to be completed by a time certain; providing for suspension of license for failure to meet the time requirements of the training and the examination until such time as the documentation is provided; providing criteria for the course work; providing for the certification of completion to be issued upon successful completion of the course work; authorizing the department to establish the content of the course work and examination; and providing criteria for relicensure of the applicant.

Section 2: Amends s. 493.6401, F.S.; requiring persons conducting internet-based training or correspondence courses to possess a Class "RS" license.

Section 3: Amends s. 493.6406, F.S.; providing criteria for training conducted by repossession services school; and revising information required on a licensure application for such school or facility.

Section 4: Amends s. 501.921, F.S.; revising the name of the organization providing the department with standards, definitions and test procedures for the formulation of antifreeze.

Section 5: Amends s. 525.07, F.S.; revising the provisions for testing the accuracy of devices used to measure petroleum fuel.

Section 6: Amends s. 526.51, F.S.; providing criteria for non-owners of brand name brake fluids to register said products with the department; providing for owner of brand name to maintain control over said product sold in the state; revising amount of brake fluid provided to department for testing purposes; and, revising requirements that constitute a new brake fluid product.

Section 7: Amends s. 527.04, F.S.; revising liability insurance requirements for persons licensed under ch. 527, F.S., relating to the sale of liquefied petroleum (LP) gas.

Section 8: Amends s. 527.07, F.S.; revising requirements for removal of LP gas from containers.

Section 9: Creates s. 576.092, F.S.; providing legislative findings; creating the Consumer Fertilizer Task Force; providing purposes of the task force; providing for task force membership; authorizing the

⁴ s. 525.07(9), F.S.

⁵ s. 501.921, F.S.

appointment of a chair and vice chair from the membership of the task force; providing for the Department of Agriculture and Consumer Services to staff the task force; requiring a report to the legislature by a date certain; providing for the dissolution of the task force; providing for a moratorium on rule-making related to fertilizer by local governments for the duration of the existence of the task force; and, providing an exemption from the moratorium under certain circumstances.

Section 10: Provides the department with spending authority from the Licensing Trust Fund for the purpose of developing curriculum and administering examinations to applicants for licensure as private investigators.

Section 11: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	(FY 07-08) Amt/FTE	(FY 08-09) Amt/FTE	(FY 09-10) Amt/FTE
1. Revenues:			
<u>Recurring:</u>			
Class "C" exams	\$51,500 ⁶	\$104,000	\$105,100
2. Expenditures:			
<u>Recurring:</u>			
Costs involved ⁷	\$ 8,000	\$ 8,000	\$ 8,000
Service charge to GR	<u>3,759</u>	<u>7,592</u>	<u>7,762</u>
	\$11,759	\$15,592	\$15,762
<u>Non-recurring:</u>			
Start-up costs:			
Administering tests	\$14,400		
Developing curriculum ⁸	<u>32,400</u>		
	\$46,800		

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None
2. Expenditures:
None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

	(FY 07-08) Amt/FTE	(FY 08-09) Amt/FTE	(FY 09-10) Amt/FTE
Costs for Class "C" exam	\$51,500	\$104,000	\$105,100
Costs for Class "CC" applicants	<u>\$ 0</u>	<u>\$ 67,700</u>	<u>\$ 72,300</u>
	\$51,500	\$171,700	\$177,400

⁶ Class "C" exam begins January 1, 2008, prorated.

⁷ Printing certificates, applications, manuals, etc.

⁸ The Department of Agriculture and Consumer Services will use voluntary services provided by members of the existing advisory council training committee who are experts in the private investigative industry. Costs include travel, lodging and meeting room expenses.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Agriculture and Consumer Services (department) rule-making authority regarding:

- The form upon which applicants for Class “C” licensure submit proof of passage of the examination.
- The content of the examination for Class “C” applicants, as well as the manner and procedure of its administration, and the examination fee.
- The content of the training course and examination criteria for Class “CC” applicants.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

This bill addresses a number of issues under the jurisdiction of DOACS. Specifically, HB 1197 provides for private investigators applying for licensure with the department to pass an examination on the provisions of Ch. 493, FS. Additionally, PI interns will be required to complete 40 hours of training with an examination for licensure. HB 1197 also amends the registration process to allow for non-owners of brake fluid brand names to register said products with the department. It also amends the LP gas statute regarding proof of insurance and persons qualified to remove LP gas from containers. Lastly, the bill revises calibration frequency to once every two years for tanks over 500 gallons.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 28, 2007, the Environment and Natural Resources Council adopted two amendments and reported HB 1197 favorably with CS. The first amendment gives the Department of Agriculture and Consumer Services spending authority from the Licensing Trust Fund for monies to be spent on curriculum development. The second amendment clarifies the coursework to be completed by private investigator interns be offered by an institution that falls under the purview of the Department of Education.

On April 20, 2007, the Policy and Budget Council adopted an amendment with 2 amendments to the amendment and reported CS/HB 1197 favorably with CS. The amendment creates a Consumer Fertilizer Task Force charged with taking public input and testimony towards the development of statewide guidelines governing non-agricultural fertilizer use rates and applications. The amendments to the amendment fixed a scrivener’s error and clarified the exemption to the moratorium regarding enactment of rules or regulations pertaining to fertilizer during the period the task force is meeting and compiling its report.